

This document has been prepared for the members of the Nevada Taxpayers Association for the purpose of commenting on various sections of the TASC for Nevada Initiative Petition. The “comments”, which are in red type, have been developed by NTA Staff and follow the sections and subsections as staff felt appropriate and necessary.

This Initiative was originally filed on December 15. It was refiled on December 20 to include two omissions - the exclusion of Improvement Districts from Section 2 and a definition of “Local Government Revenue”. It was again refiled on December 22 when it was found an incorrect version was filed on December 20; the December 20 version was to have also had the voter requirement for fees and business licence increases removed. It wasn’t. The December 22 version contained that correction.

Initiative Petition

State of Nevada

TASC for Nevada

Explanation - Matter in **italics** is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

A new article, designated Article 10A and entitled **Tax and Spending Control for Nevada**, shall be added to the Nevada Constitution to read as follows:

ARTICLE 10A. Tax and Spending Control for Nevada.

Sec. 1. General.

WHEREAS, A Nevada Supreme Court decision, Guinn v. Legislature, 119 Nev. 277 (2003), held that the amendment twice passed by the voters of Nevada and incorporated in Section 18 of Article 4 of the Nevada Constitution requiring Legislative supermajorities for the passage of bills or resolutions increasing public taxes was a mere “procedural” requirement, to be effectively negated by a purportedly “substantive” provision of the Constitution; and

WHEREAS, The supermajority requirement was intended by the sovereign People of Nevada to be a fundamental governing principle of this State; and

WHEREAS, Limitation on the growth of Government remains the intent of the sovereign People of Nevada; and

WHEREAS, Limitation on the amounts that may be appropriated or authorized for expenditure will restrain the growth of Government; now, therefore

BE IT RESOLVED BY THE PEOPLE OF NEVADA that this new article, entitled Tax and Spending Control for Nevada, be added to the Nevada Constitution, reading as follows:

COMMENT: This section is self-explanatory. While it creates a new article to encompass all provisions from the wording of ballot questions to spending limits to emergency and budget stabilization accounts, it is unknown if this conforms to Nevada law which restricts changes in law to a single subject.

Sec. 2. The People’s Right to Vote.

1. For any fiscal year that commences on or after January 1, 2009, state and local governments, excluding government enterprises and improvement districts, must receive voter approval for any new tax or rate increase above that of the prior year, or extension of an expiring tax, or a tax policy change directly causing a tax revenue gain to any such government. Voter approval is also required for the creation of any multi-fiscal year direct or indirect debt or other financial obligation after January 1, 2009 in order for the debt service payments of such debt or obligation to be exempted from Biennial Spending under Section 3(4) of this Article. Notwithstanding, debts or obligations with adequate present cash reserves, pledged irrevocably and held for payments in all future years, refinancing government bonded debt at a lower interest rate and adding new employees to existing pension plans shall not require a public vote under this Section.

COMMENT: Indirect debt includes both leases and lease purchases. This language also begs the following question? Since school districts are not identified as a local government, does this mean that leases and lease purchases by school districts are excluded from this provision? (Statute already requires that school districts issuing bonds retired by a property tax levy must receive voter approval.) The Legislature does not generally put G.O. debt questions to a vote of the people. Currently only local government general obligation debt must receive voter approval.

Sec. 2 Comment continued

Requiring voter approval of Tax Policy Changes is problematic. For instance, after the 2003 session the Legislative Tax Oversight (SB 8) committee heard testimony regarding a number of changes that were needed. NTA alone submitted 24 recommendations for changes. While most of the changes did not increase revenue and in some cases reduced revenue, there were changes made in the Live Entertainment tax which created an increase for some taxpayers. From the language of this section, it would appear that the changes to the LET would have had to be voter approved. Generally, tax policy changes not easily explained.

Additionally because the language for "indirect debt" applies to leases and lease-purchases, equipment leases as well as building leases "without adequate present cash reserves" will have to go to the voters. It can be expected that there will be a increase in the number of ballot questions that will appear on election ballot and a corresponding increase in voter confusion over the ballot questions.

2. Any election held to seek voter approval under subsection 1, must occur at an election conducted on the first Tuesday after the first Monday in November and must have been referred by at least a two-thirds affirmative vote of the members elected to each house for a state referral and two-thirds of the governing board of a referring local government for a local referral. Passage of any such ballot question shall require the affirmative vote of a majority of the eligible voters casting a ballot at that election.

COMMENT: Nevada law provides that special elections cannot be used for tax questions. Currently tax questions in an odd numbered year are voted on at the same time as municipal general elections in June. This would change from June to November the month that tax questions are put to the voters in an odd numbered year. This will create an additional expense for cities, who currently are required to hold a June general election for the election of officials. Instead of being able to use this election for tax questions as currently allowed, municipalities will incur the expense of a third election if they have a tax issue to put before the voters.

3. Every ballot question to determine voter approval under Section 2, subsection 1 of this Article shall offer voters the options of "YES" or "NO" and shall include, in addition to normal descriptive language, the following statements in bolded capital letters:

(a) For any revenue approval question proposed to increase the amount of the State Spending Limit under Section 4 of this Article, the maximum dollar amount of the proposed increase in the State Spending Limit must be predetermined legislatively and the ballot and sample ballot must state in bold type immediately below the measure's title : "A YES VOTE ON THIS MEASURE WILL AUTHORIZE THE STATE TO RAISE TAXES AND EXCEED STATE CONSTITUTIONAL LIMITS ON GOVERNMENT SPENDING BY [insert proposed spending limit increase]."

COMMENT: There appears to be a conflict between what this Section requires and what Section 4 allows. For instance, if the State Spending Limit cannot be met because of a revenue shortfall, does this mean that an entity can increase a tax without voter approval, because the entity is not exceeding the State or Local Government Spending Limit?

(b) For any revenue approval question proposed to increase the amount of the Local Government Spending Limit under Section 8 of this Article, the maximum dollar amount of the Local Government Spending Limit under Section 8 must be predetermined and the ballot and sample ballot must state in bold type immediately below the measure's title : "A 'YES' VOTE ON THIS MEASURE WILL AUTHORIZE [insert appropriate local government] TO RAISE TAXES AND INCREASE LOCAL GOVERNMENT SPENDING BY [insert maximum projected revenue increase]."

(c) For all multi-fiscal year debt approval questions required by this section, the maximum dollar amount of the amount borrowed and the cost of debt service must be predetermined and the ballot and sample ballot must state in bold type immediately below the measure's title : " A 'YES' VOTE ON THIS MEASURE WILL AUTHORIZE [insert 'THE STATE' or name of the appropriate local government] TO BORROW UP TO [insert maximum dollar amount financed under the measure] AT A TOTAL REPAYMENT COST OF [insert anticipated maximum total dollar amount of completed debt service]."

COMMENT: Self Explanatory.

Sec. 3. Definitions.

COMMENT: Many of the following definitions are for the purpose of clarifying the meaning of the terms used in the various Sections of this Initiative.

1. "Inflation" means the change expressed as a percentage in the consumer price index for the Western States, U.S. city average, all goods, all urban consumers, as calculated by the Bureau of Labor Statistics of the United States Department of Labor, or its successor index.

2. "Population" means the number of people residing in the state as determined by the annual estimates as calculated according to the procedures established as of fiscal year July 1, 2005 or substantially similar successor procedures and such number shall be adjusted to match the Federal Decennial Census. If a court of competent jurisdiction in a final order shall adjudge successor procedures to not be substantially similar, "Population" shall mean the number of people residing in the state as determined by the annual Federal Census estimates.

COMMENT: It appears that if multiple years of increases or decreases occur between the Federal Decennial Census comparisons there is no mechanism to adjust the spending limit up or down for the years of increase or decrease. Per Section 4, subsection 1, it seems that the only change that would occur would be for one year, between the year prior to the Federal Decennial Census and the year the Federal Decennial Census numbers are issued.

3. "Biennial budget cycle" means the two year period of consecutive state fiscal years commencing upon the first day of July during a year in which a regular session of the legislature is held.

4. "Biennial spending" means the total amount of moneys to be spent during a biennial budget cycle, whether by appropriation, authorization or other means, except:

COMMENT: Generally, the following exclusions recognize the problem that would occur from having these revenue sources included within the calculations for the "Spending Limit". They also apply to the definition of "Local government spending" (subsection 5).

(a) Moneys received from the federal government, or from any person or entity in the form of a gift or grant;

(b) Appropriations funded by multi-fiscal year indebtedness, or payment and interest on multi-fiscal year indebtedness if created before January 1, 2009 or otherwise established pursuant to Section 2(1) of this Article;

(c) Appropriations funded by unemployment and disability insurance funds, permanent endowment funds, trust funds including the highway trust fund of Article 9, Section 5, and the public education trust fund of Article 11, Section 3, or pension funds;

(d) Appropriations funded from proceeds from the sale of government property to non-governmental entities at full cash value;

(e) Moneys appropriated for declared emergencies pursuant to Section 5 of this Article, moneys appropriated for refunds to taxpayers pursuant to Section 6 of this Article, and appropriations funded by the voter-approved release of a Refundable Surplus pursuant to Section 6, subsection 3 of this Article; or,

(f) Moneys expended by government enterprises to provide goods or services to the public where the purchase of such good or service is discretionary.

5. "Local government spending" means the total amount of moneys appropriated by a local government to be spent during a fiscal year, except:

(a) Moneys or appropriations described in this Section by subsection 4, paragraphs (a) through (f); or

(b) Moneys appropriated for refunds or credits to taxpayers pursuant to Section 8 of this Article, and appropriations funded by the voter-approved spending of a Refundable Local Tax Surplus pursuant to Section 8, subsection 4 of this Article.

6. "State" means the state government including all branches, state offices, authorities, agencies, boards, commissions, institutions, instrumentalities and any division or unit of state government which are directly supported, in whole or in part, with tax funds.

COMMENT: It appears that this section eliminates from the spending limitation, regulatory boards and commissions which are funded by fees imposed on the persons or businesses the boards and commissions regulate.

Sec. 3 Continued

7. “Multi-year indebtedness” means any evidence of indebtedness that is entered into or establishes a debt obligation of the State or a local government for longer than one fiscal year, and includes, but is not limited to, bonds, notes, certificates, and lease-purchase agreements.

8. “Emergency” means an extraordinary event or occurrence that could not have been reasonably foreseen or prevented and that requires immediate expenditure to preserve the health and safety of the people.

COMMENT: The “Comment” for subsection 4 of this Section also applies for the definitions found in subsections 9, 10, 11 and 12.

9. “Total state revenue” means all moneys received by the state from any source except any of the following:

(a) Moneys received from the federal government; or from any person or entity in the form of a gift or grant;

(b) Moneys received from multi-year indebtedness;

(c) Moneys which are income earned on moneys in permanent endowment funds or segregated trust funds under Article 9, Section 2(2) of this constitution, or moneys from sources designated for public highways trust fund pursuant to Article 9, Section 5 or the public education trust fund pursuant to Article 11, Section 3 of this constitution;

(d) Proceeds from the sale of government property to non-governmental entities at full cash value;

(e) Moneys appropriated for declared emergencies pursuant to Section 5 of this Article, moneys appropriated for refunds to taxpayers pursuant to Section 6 of this Article, and appropriations funded by the voter-approved release of a Refundable Surplus pursuant to Section 6, subsection 3 of this Article; and,

(f) Moneys received by government enterprises.

10. “Local Tax Revenue” as used in Section 8 of this Article, means all moneys received by a local government excluding those categories described in this Section by subsection 9, paragraphs (a) through (f), and in Section 8, subsections 3 and 4.

11. “State Spending Limit” means the State Spending Limit specified pursuant to Section 4 of this Article.

12. “Local Government Spending Limit” means the Local Government Spending Limits specified pursuant to Section 8 of this Article.

13. “Local government population” means the number of people residing within a local jurisdiction as determined by a substantially accurate system of population measurement for local governments that is uniformly administered by the state and designated for that purpose. Should no such qualifying measurement system be established, the measure of state population pursuant to subsection 2 of this Section shall be employed to determine the Local Government Spending Limit in Section 8 of this Article.

14. “Government enterprise” is a government-owned business, government board or commission that lacks authority to tax and receives less than 10 percent of its annual revenue in the form of grants, transfers or appropriations from all Nevada state and local government entities combined.

15. “Tax policy change” means any policy change directly altering the formula, method of calculation, qualifications, exemptions, terms or scope of an assessed tax.

16. “Improvement district” pursuant to Section 2, subsection 1 of this Article does not include county commissioners sitting as the ex officio board of a General Improvement District under Chapter 318 of the Nevada Revised Statutes.

COMMENT: If this paragraph is read in conjunction with Section 2, subsection 1 it would appear that special improvement districts are excluded and general improvement districts are included with regards to the peoples right to vote on tax increases.

Sec. 4. State Spending Limits.

1. For any state biennial budget cycle that commences on or after January 1, 2009, increases in biennial spending shall be subject to a State Spending Limit calculated as follows: (i) the total amount of biennial spending in the preceding biennial budget cycle increased or decreased by the percentage change in the consumer price index pursuant to Section 3, subsection 1, for the two preceding calendar years ending during the preceding state biennial budget cycle, plus the percentage change in state population during the two preceding calendar years ending during the preceding state biennial budget cycle, OR, (ii) the State Spending Limit for the previous biennial budget cycle; whichever amount is greater.

COMMENT: Subsection 1 (i) is similar to the provision that currently exists in statute. The major difference between the provisions is that the current statutory provision applies only to the State's general fund. This provision also updates the base year which under current statute is for the 1975 biennium. Section 1 (ii): This provision in most, but not all, cases eliminates the problem that Colorado had regarding the "ratchet-down" issue. It does not eliminate the ratchet down provision if there are two or more years when spending has to be decreased because of insufficient revenues.

2. Notwithstanding subsection 1 of this Section, the State Spending Limit may be adjusted to incorporate revenue changes approved by voters pursuant to Section 2 of this Article.

3. The proposed biennial budget prepared by the executive department of the state government shall not exceed the State Spending Limit.

4. For the initial state biennial budget cycle of 2009-2011, the base biennium for the calculation of the State Spending Limit under subsection 1 shall be the 2005-2007 biennium adjusted for cumulative changes in population and inflation occurring between January 1, 2007 and January 1, 2009.

Sec. 5. Emergency Reserve Fund.

1. For any state biennial budget cycle that commences after January 1, 2009 and in which total state revenue exceeds the State Spending Limit determined pursuant to Section 4 of this Article, and before making any transfers to the Budget Stabilization Fund or any refunds or credits as required by Section 6 of this Article, the state Controller shall, prior to the end of the state biennial budget cycle, transfer total state revenue collected in excess of the State Spending Limit to the Emergency Reserve Fund, which fund is hereby created in the state treasury, to the extent necessary to ensure that the balance of the fund at the end of the biennial budget cycle is an amount equal to 3 percent of the total State Spending Limit for the ensuing state biennial budget cycle. The state shall not be required to transfer to the Fund any moneys other than revenue in excess of the total State Spending Limit. Unused revenues remaining in the Emergency Reserve Fund apply to the Fund for the ensuing biennium. The Fund shall be in addition to, and shall not be used to meet, any other reserve requirement of this Constitution or of law.

2. Moneys in the Emergency Reserve Fund may be expended only for an emergency declared by law that meets the definition within this Article. "Emergency" does not mean a revenue shortfall or budget shortfall. Appropriation from the fund may occur only upon a three-fourths approval vote of all elected members of each house of the legislature. Interest or other income earned on the Emergency Reserve Fund shall accrue to the fund. If any transfers from the Emergency Reserve Fund are determined in a legal proceeding to have been illegal, such transfers must be replaced, with interest, from total state revenue in the ensuing fiscal year and shall be included in the calculation of biennial spending under Section 3(4) of this Article.

COMMENT: Not only is a 3/4's majority instead a 2/3's majority of Legislators required to expend money from the fund, but if the emergency use of the funds is found illegal the money must be paid back with interest. Having to pay back the funds with interest should be sufficient threat to expend the funds only for emergencies of health and safety as defined in Section 3, subsection 8. And since this fund is to be used only for a public health or safety emergency, shouldn't a less cumbersome and time-consuming method have been developed other than calling the Legislature into Special Session? The wording of this section precludes immediately responding to an emergency. The language of subsection 2 can be considered overkill.

Sec. 6. Budget Stabilization Fund.

1. For any state biennial budget cycle that commences on or after January 1, 2009, if total state revenue as defined in Section 3 of this Article exceeds the State Spending Limit for that biennial budget cycle the excess shall be reserved or refunded as follows:

(a) The Legislature shall provide by law for the creation, as a special revenue fund, of a fund to stabilize the operation of the state government and to be known as the Budget Stabilization Fund. After any amount required to be transferred to the Emergency Reserve Fund of the state pursuant to Section 5 of this Article has been transferred, an amount of any remaining excess amount of total state revenue shall be transferred in the manner prescribed by the legislature by law to the Budget Stabilization Fund.

(b) The amount transferred to the Budget Stabilization Fund in accordance with this subsection shall be equal to the lesser of (i) an amount equal to 50 percent of any such remaining excess amount of total state revenue, or (ii) the amount necessary to ensure that the balance in the Fund at the end of the biennium is an amount equal to 5 percent of the total State Spending Limit for the ensuing biennial budget. Interest or other income earned on moneys in the Fund shall accrue to the Fund.

Sec. 6 continued

(c) *In no case shall additional moneys be transferred into the Fund if the balance in the fund is equal to or more than 5 percent of the total State Spending Limit for the ensuing biennial budget cycle.*

(d) *This fund shall constitute constitutional protection for the State of Nevada's current Fund to Stabilize Operation of State Government and for its purpose, and shall receive any moneys currently therein, with the exception of funds in the disaster relief account, which shall be placed within the Emergency Reserve Fund.*

COMMENT: The existing Budget Stabilization Fund (a.k.a. rainy day fund) was passed in 1991. It was originally proposed by NTA and requested by Senator O'Connell as a Constitutional Amendment. However, we were unable to get a hearing. After much negotiating we were finally able to get the fund statutorily established. Funds from the "disaster relief account" which are currently in the existing Budget Stabilization Fund are transferred to the "Emergency Fund" (Section 5 of this initiative). This provides Constitutional protection for the rainy day fund.

Because the first 3% of surplus is mandatorily required to be transferred to the Emergency Fund, it will take much longer to see any substantial transfers go into the Budget Stabilization fund. Since this fund would probably be needed before the Emergency Fund, it would have made more sense to require the first transfer to the Stabilization Fund, or in the alternative to have required part of the surplus to be deposited to each fund.

2. *The State Controller shall transfer money from the Budget Stabilization Fund to the general fund in the minimum amount necessary to offset a shortfall in total state revenue below the State Spending Limit. Under no other circumstances shall the State Controller transfer moneys from the Budget Stabilization Fund.*

COMMENT: This is a case where Legislative oversight is needed. The current statutory provision which requires a governor's recommendation and legislative approval should have been retained.

3. *After transfers are made to the Emergency Reserve and Budget Stabilization funds pursuant to Section 5 or Section 6 of this Article, an excess amount of total state tax revenue for a biennial budget cycle may remain. In such an event:*

(a) *Should the excess tax revenue be a sum equal to or greater than 0.5 percent of the State Spending Limit, it shall be deemed "Refundable Tax Surplus." By a two-thirds vote of each chamber, the Legislature may ask voters for approval, pursuant to Section 2, subsection 2 of this Article, to spend all or part of a Refundable Tax Surplus. Absent approval of the voters to spend the Refundable Tax Surplus, half of that Surplus shall be refunded or credited to taxpayers during the next ensuing fiscal year in proportionate relief of all state motor vehicle taxes and fees paid during the previous biennium, and the remaining half of that Surplus shall be refunded or credited to taxpayers during the next ensuing fiscal year in proportionate relief of state excise taxes paid by employers upon employees' wages during the previous biennium. If any portion of the Surplus remains after fully satisfying either tax rebate category, that portion shall be refunded or credited proportionately to taxpayers against taxes paid in a manner determined by majority action of the Legislature.*

(b) *Should the excess tax revenue be a sum less than 0.5 percent of the State Spending Limit, it shall be deemed a "Saved State Tax Surplus" and shall constitute an obligation of the state government to be repaid to state taxpayers at such time as a subsequent Refundable Tax Surplus, in combination with that Saved Tax Surplus, exceeds 0.5 percent of the State Spending Limit.*

COMMENT: This is the refund provision. The Legislature may determine if taxpayers receive a refund or credit. Voter approval is required for government to keep the surplus, *but only when and if the 0.5 percent limit is reached.*

In 1995 the Board approved a series of recommendations titled "Fiscal Reforms for State Government" and "Fiscal Reforms for Local Government". One of the recommendations was that any surplus funds should only be used for non-ongoing expenses. The Recommendation further continued saying that surplus revenue should be prioritized to be used for: the purchase of technological equipment; employee training; and capital projects including highway construction.

The refund/credit provision is too specific. There are multiple problems with this provision. (1) The surplus to be refunded or credited could be a nominal amount, say \$20 million. In that instance due to the 50% split between all taxpayers (motor vehicle taxes and fees) and business taxpayers (excise taxes paid by the employer on employee's wages) a refund or credit wouldn't represent more than a token rebate, but could have a disproportionate cost impact to implement. (2) The cost to provide the refund or credit must be taken from the existing spending limit, thereby reducing funds available to spend on governmental functions. (3) A future Legislature can change the Modified Business Tax (referred to above as "taxes paid by employers upon employees wages") back to the Business License Tax, a.k.a. the "Head Tax" which would potentially negate a business refund. Who receives the refund/credit should have been left to the discretion of the Legislators.

Subsection 3 Comments continued

Additionally there are potential problems with the procedure for asking the voters for approval to spend the “refundable surplus.” During a regular Legislative session, the budget is established. Two-thirds of the members of the Legislature could determine they want to ask the voters to spend the surplus. That election would occur in November; five months after the Legislature adjourns. Because the Legislature approves a budget which is effective July 1 of theyear, the Legislature would have to create a second or supplemental budget in order to spend the “surplus” if approved by the voters. Since it is unrealistic to believe that a supplemental budget can be agreed to in 120 days it can be expected there will be an increase in the number of Special Sessions that will be called.

Sec. 7. Mandated and Shifted Costs.

1. *The Nevada Legislature shall not, directly or indirectly, enact laws or authorize the adoption of regulations, requiring the counties and cities of the State to provide new services, expand existing services or conduct new or additional governmental function without appropriating or designating state funding sources to fully support said new services, expansion of existing services and new or additional governmental functions.*

2. *The proportion of state revenue paid to all local units of government, taken as a group, shall not be reduced below that proportion in effect at the adoption of this Article unless the state has relieved local governments of an obligation or expense. Where state laws or regulations directly or indirectly reduce the expenses of local governments, the proportion of state revenue paid to all local units of government may be reduced by up to the amount of the reduced expenses. Where costs are transferred from one unit of government to another unit of government, either by law, court order or agreement, the limitation imposed by Sections 4 and 8 of this Article shall be adjusted and transferred accordingly so that total costs of the transferred services are not increased as a result of such transfer.*

COMMENT: Subsection 1 prohibits the Legislature from mandating unfunded costs to a local government. Subsection 2 provides the mechanism for reducing expenditures removed from a unit of government from the “Spending Limitation”. Additionally, the Nevada Association of Counties has filed an Initiative Petition called the “Prohibition of Unfunded Mandates”. The prohibition of unfunded mandates has been previously supported by the NTA Board.

It is unknown if Federal mandates are covered in the language of subsection 2. If they are not included this will present a major problem. Most of the State mandates to local governments involve unfunded Federal mandates placed upon the State.

Sec. 8. Local Government Spending Limits.

COMMENT: Subsections 1 and 2 parallel the State Spending Limit (see Section 4).

1. *All local government spending by cities and counties chartered by the state for three or more years shall be subject to a Local Government Spending Limit. This limit shall apply to the first fiscal year for each city and county that commences on or after January 1, 2009, and shall limit city or county fiscal-year spending to the greater of:*

(a) the total amount of local government spending in the preceding fiscal year increased by a percentage amount equal to the result obtained by adding the rate of inflation for the preceding calendar year, plus the percentage change in local government population during the preceding calendar year; OR,

(b) the Local Government Spending Limit for the previous fiscal year.

2. *Notwithstanding subsection 1, the Local Government Spending Limit may be adjusted to incorporate revenue changes approved by voters pursuant to Section 2 of this Article.*

3. *Counties and cities may retain up to half of the budget surplus in any fiscal year for a Budget Reserve Fund. The purpose of the Fund shall be limited to offsetting a shortfall of revenue below the Local Government Spending Limit or addressing declared emergencies. The Budget Reserve Fund is limited to 5 percent of the Local Government Spending Limit.*

4. *After transfers are made to a county or city Budget Reserve Fund pursuant to subsection 3 of this section, an excess amount of local tax revenue for a fiscal year may remain. In that event:*

(a) Should the excess tax revenue be equal to or greater than 1 percent of the Local Government Spending Limit, it shall be deemed “Refundable Local Tax Surplus.” By a two-thirds vote of the local governing body, the local government may ask voters for approval, pursuant to Section 2, subsection 2 of this Article, to spend all or part of a Refundable Local Tax Surplus.

Paragraph (a) Continued

Absent approval of the voters to spend the Refundable Local Tax Surplus, that Surplus shall be held and credited to the next year's property tax bill for each private parcel in the jurisdiction of the local government, in proportion to each parcel's contribution to total property tax proceeds. If any portion of the Surplus remains thereafter, that portion shall be refunded or credited proportionately to taxpayers against taxes paid in a manner determined by majority action of the local government's governing board.

(b) Should the excess tax revenue be less than 1 percent of the Local Government Spending Limit, it shall be deemed a "Saved Local Tax Surplus," and shall constitute an obligation of the local government to be repaid to local government taxpayers at such time as a subsequent Refundable Local Tax Surplus, in combination with that Saved Local Tax Surplus, exceeds 1 percent of the Local Government Spending Limit.

COMMENT: One-size does not fit all, and this is what the local expenditure limitation attempts to do. Nevada has one of the most diverse county make-ups of any state. It is not only urban, but rural with rural counties having very different economic bases from the urban counties. The limitation provided by this section will have substantially differing impacts between urban and rural counties and cities. These differences will most assuredly lead to unintended consequences, since there was no attempt to calculate the spending limitation impact before the initiative was filed.

Additionally, it is unknown if an unincorporated town budget which is included in the county budget has its own spending limit. If the town budget is part of the county budget and by extension the Spending Limit applies only to the county budget and not the town budget there will certainly be unintended consequences, particularly when one entity is growing and the other is not or has a declining population.

Sec. 9. Amendment.

Any proposed amendment to this Constitution mandating specific state appropriations for projects or services, or establishing a minimum formula for state appropriations, for any purpose, that does not also establish a specific source of additional state revenue dedicated to fully funding those appropriations, must include the following voter advisory displayed in bolded capital letters above the ballot question on the sample ballot and on the ballot:

"NOTICE TO VOTERS: THIS MEASURE REQUIRES ADDITIONAL STATE EXPENSES WITHOUT CREATING A MEANS TO PAY FOR THEM. PASSAGE MAY REDUCE FUNDING FOR OTHER IMPORTANT GOVERNMENT FUNCTIONS."

COMMENT: This is a very necessary provision and protection for the taxpayer. Informing the taxpayers of a potential loss of services or a potential tax increase should help avoid the problem of "ballot box budgeting" experienced in a number of states, but most notably California and Colorado.

Sec. 10. Implementation.

All provisions of this Article are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. The legislature may enact such legislation as may be necessary to implement and enforce the provisions of this Article and repeal or amend all laws inconsistent with the provisions of this Article to conform to the provisions of this Article. In any circumstances where two or more reasonable interpretations of a provision of this Article exist, the correct interpretation shall be that which better restrains growth in government spending. In any circumstances where another provision of this Constitution is deemed to conflict with this Article, such other provision shall be superseded by this Article. If a court of competent jurisdiction in a final order shall adjudge any expenditure category, or revenue source, exempt from this section, the process of computing the State Spending Limit shall be adjusted accordingly and remaining provisions shall be in full force and effect.

COMMENT: Self-explanatory.

Sec. 11. Enforcement.

Any Nevada taxpayer or class of Nevada taxpayers shall have standing to commence an action to enforce this Article. A court of record shall award a successful plaintiff costs and reasonable attorney fees in the suit. Should the Court determine that the action was frivolous, the Court shall award reasonable expenses and attorney fees to the prevailing party.

COMMENT: Unlike the Eminent Domain Initiative this section does not encourage frivolous lawsuits.

Sec. 12. Effective Date.

This Article shall become effective January 1, 2009.

Please note: This page contains the “Description of Effect” which follows Sec. 12 of the Initiative Petition as it was filed. No comments are submitted regarding the “Effect”.

Description of Effect

If enacted, TASC for Nevada will add a new article to the Nevada Constitution:

! To guarantee the people of Nevada that they shall henceforth hold the final Constitutional authority when efforts are made to increase their state or local tax burdens; [Section 2]

! To keep normal spending increases at all government levels within the limits of percentage growth in population plus percentage increase in inflation; [Section 4]

! To allow spending increases above those same limits when approved by the voters of Nevada or of the relevant city or county; [Section 2]

! To establish a new constitutionally protected Emergency Reserve Fund to meet unforeseen catastrophic emergencies such as natural disasters or major terrorist attacks; [Section 5]

! To establish a new constitutionally protected Budget Stabilization (or “Rainy Day”) Fund to automatically assure more stable budgets during economic downturns; [Section 6]

! To return excess tax revenues to taxpayers when those tax revenues accumulate above (a) the constitutional spending limit and (b) the ceilings of the emergency reserve and budget stabilization funds; [Section 6]

! To establish constitutional protection for local governments against the practice of unfunded mandates imposed by the state legislature. [Section 7]

! To establish a new constitutionally protected Budget Stabilization (or “Rainy Day”) Fund to automatically assure more stable budgets during economic downturns; [Section 6]

! To return excess tax revenues to taxpayers when those tax revenues accumulate above (a) the constitutional spending limit and (b) the ceilings of the emergency reserve and budget stabilization funds; [Section 6]

! To establish constitutional protection for local governments against the practice of unfunded mandates imposed by the state legislature. [Section 7]