



OTTEN JOHNSON ALERT

What's on the Ballot? – Proposition HH

October 2023 • [Emily L. Maino](#)

Colorado ballots are in the mail for the upcoming 2023 election. Among the items for voters to consider this year is Proposition HH. Proposition HH is a ballot measure pertaining to property taxes that has been receiving a lot of media attention ahead of the election. If Colorado voters pass Proposition HH, it will reduce property tax rates for the next 10 years and offset the corresponding reduction in state revenue by increasing the amount of tax revenue that the state may retain rather than refund to residents under the Colorado Taxpayer's Bill of Rights (“**TABOR**”). In sum, if Colorado voters pass Proposition HH, it will (1) reduce property tax rates for both residential and nonresidential properties; (2) create new subclasses of real property for assessment purposes; (3) provide for additional funds to backfill local governments for lost revenue; (4) alter the existing state revenue caps; and (5) modify the way TABOR refunds are calculated for individual taxpayers.

Background

In 2020, Colorado voters approved [Amendment B](#), which repealed the Gallagher Amendment of 1982. For 38 years, the Gallagher Amendment constitutionally required all property tax collections from non-residential properties to account for 55% of all property taxes in Colorado, so that residential property tax collections would only account for 45% of all property taxes. Upon its repeal, residential property tax bills were initially estimated to increase significantly. However, in 2020 and [2022](#), the Colorado legislature passed short-term bills to mitigate those anticipated property tax spikes (the “**Post Gallagher Legislation**”). The property tax reductions implemented

under the Post Gallagher Legislation will expire after the 2024 tax year.

In an attempt to again address the impending property tax increases, the Colorado legislature passed [SB23-303](#) on the last day of its 2023 session to put in place property tax reductions through 2032. However, this measure did not automatically go into effect because under TABOR, the state legislature is required to refer the revenue changes proposed in SB23-303 to the voters through a ballot measure. This ballot measure is Proposition HH. If Proposition HH does not pass, the provisions related to property taxes under SB23-303 will automatically be repealed and thus will not go into effect.

Property Tax Rate Reductions

If passed, Proposition HH will temporarily reduce the assessment rates for residential and nonresidential properties from 2023 until 2032. Residential, commercial, and agricultural properties will all see reductions to their property tax assessment rates under Proposition HH at varying levels depending on the property classification. Additionally, properties classified as residential will see an increase in the amount subtracted from the property's market value before the assessment rate is applied, known as the valuation reduction.

The Colorado Legislative Council Staff summarized the potential fiscal impact of Proposition HH and SB23-303 in a [Revised Fiscal Note](#). The summary includes tables of the property tax assessment rates and valuation reductions proposed under Proposition HH, along with the proposed changes to current law. The actual potential decreases in property tax amounts for property owners will vary depending on the specific mill levy rates applicable to a specific property.

New Subclasses of Real Property

Proposition HH will also create new subclasses of residential and nonresidential real property for taxation assessment purposes if passed. The existing single-family residential class will be divided into three subclasses: (1) owner-occupied primary residences, (2) qualified-senior primary residences, and (3) all other residential real property that does not fall into either primary residence subclass and is not multifamily. Properties that qualify for the primary residence subclasses will benefit from greater property tax assessment reductions than other residential real property over the course of the bill's term. Starting in 2025, residential property owners will be required to complete and file an application with their local county assessor to qualify for the new primary residence subclasses and thus benefit from the higher tax exemption rate moving forward.

Additionally, Proposition HH will create a new subclass of nonresidential real property for renewable energy agricultural land. Land in this subclass will only be classified as

such if a renewable energy facility was built on land that was considered agricultural at the time of construction. This new subclass will benefit from lower proposed tax rates under Proposition HH than the existing nonresidential real property subclasses.

Limit to Local Government Property Tax Revenue Retention

Starting in tax year 2023, if passed, Proposition HH will limit the amount of property tax revenue that local governments can collect above the rate of inflation. If a local government plans to exceed this limit, it must adopt a resolution or ordinance to exceed the limit after providing notice and the opportunity for public testimony. If the local government exceeds the limit without taking these steps, it must refund the excess revenue to taxpayers.

The limit does not apply to school districts or home rule cities and counties. Revenue generated from special circumstances, such as new construction, classification changes, annexations, mining, and oil and gas activities, among others, will also not be subject to the limit.

Backfill of Lost Property Tax Revenue

Under the Post Gallagher Legislation, the state is required to reimburse local government entities or districts such as fire, hospital, water, and individual school districts for the lost property tax revenues. The reimbursement requirement, known as backfilling, is subject to a cap and will expire in 2024.

To compensate for further lost property tax revenue, Proposition HH will authorize the state to reimburse local governments for that lost revenue through 2032. In particular, the SB23-303 provisions will modify existing backfill mechanisms to provide additional funds to eligible local governments.

To accomplish the backfilling and reimbursement requirements under Proposition HH, the state will use TABOR surplus revenue to cover the increased backfill obligations for the 2023 property tax year. For property tax years 2024 through 2032, the state will fund these increased obligations using a new “state public school fund” as well as the Local Government Reimbursement Cash Fund, both of which will be funded by a transfer from the state General Fund and a portion of the TABOR surplus revenue under the new Proposition HH Cap (discussed below).

Proposition HH Cap

TABOR, and the modifications of Referendum C in 2005, cap the amount of revenue that the state can retain and spend. The current limit, known as the [Referendum C cap](#), is set annually based off of the prior fiscal year cap, adjusted to account for inflation, population growth, qualification and disqualification of enterprises and debt

service changes (the “**Referendum C Factors**”).

The proposed Proposition HH cap regarding the revenue the state may retain uses the same Referendum C Factors to adjust the previous cap annually, but also adds one percent (1%) to the total amount. The one percent growth is intended to increase state retained revenue to offset the property tax revenue losses from 2023 through 2032 effectuated by Proposition HH. The one percent growth factor will be added to the cap each fiscal year for the term of Proposition HH.

Beginning in fiscal year 2032/2033, the Proposition HH cap will return to the Referendum C cap level; this will remain in place unless the state legislature acts to extend the property tax assessment rate reductions, or otherwise reduce the property tax assessments to an equal or greater measure.

TABOR Impacts

Consequently, the cap proposed in Proposition HH reduces the amount of revenue that the state would otherwise be obligated to refund to taxpayers under TABOR to offset the property tax revenue loss.

The state legislature also passed [HB23-1311](#) this year in connection with SB23-303 to address the implications that Proposition HH will have on TABOR refunds for this fiscal year if it passes. Under HB23-1311, for tax year 2023, TABOR refunds will be paid out at “an identical payment to qualified individuals,” rather than at a tiered rate based on income. In subsequent years, TABOR refunds will continue to be made under the six-tier income system and reductions will be made proportionately across all tiers. Under Proposition HH the state legislature estimates the state will retain \$166.6 million in 2023-24 and \$358.6 million in 2024-25, amounts that would have otherwise been refunded to taxpayers under the current structure. The state also estimates that these retained amounts will continue to increase each year through 2031-32. However, HB23-1311 will only alter the TABOR refund calculation if voters approve Proposition HH.

[Ward v. State, 2023 CO 45 \(Colo. 2023\)](#)

The Colorado Supreme Court ruled on a challenge to SB23-303 and Proposition HH in August. The challenger in this case argued that (1) SB23-303 and Proposition HH violate Colorado’s single subject requirement for constitutional amendments or statutory propositions and (2) Proposition HH violates the Colorado constitution’s clear expression requirement, which pertains to setting titles of ballot measures.

The Colorado Supreme Court held that Colorado courts do not have subject matter jurisdiction to consider the single subject requirement argument unless the measure is approved by Colorado voters, affirming long standing precedent that courts cannot

interfere with ongoing legislative processes, absent extraordinary circumstances. Thus, the single subject issue cannot be ruled upon by the courts unless the voters approve Proposition HH. Additionally, the Court held that while it had jurisdiction to hear the challenge to the clear expression requirements, the petitioners failed to establish that Proposition HH violates the clear expression requirement and therefore the court declined to modify the ballot language as petitioners requested. Therefore, Proposition HH is appearing on ballots in the form finalized by the state legislature. The court, however, expressly stated that it expressed no opinion on the merits of the single subject claims, thus leaving the substance open for further challenges if the ballot measure passes.

Conclusion

Colorado voters will determine Proposition HH's fate on November 7, 2023. Regardless of whether Proposition HH ultimately passes or fails, it is unlikely to be the end of the property tax conversation in Colorado. Even if passed, it may be further challenged in Colorado courts as the Colorado Supreme Court did not ultimately rule on the constitutionality of some of the claims. Additionally, [Initiative 50](#), a proposed statewide cap on property taxes, received enough signatures to appear on the 2024 ballot next year, demonstrating that this year's vote will not be the last time that Colorado voters may consider changes to property taxes in the coming years.

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