

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:

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.

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.

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]."

(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]."

Sec. 3. Definitions.

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, or a similar federal index more specific to Nevada, when established.

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.

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:

- (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;

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(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.

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.

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.

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.

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.

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.

(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.

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.

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.

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.

Sec. 8. Local Government Spending Limits.

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. When local tax revenue exceeds the Local Government Spending Limit, 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. 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.

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.

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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 ballot and the sample 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."

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.

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 successful plaintiffs costs and reasonable attorney fees in the suit. Should the Court determine an action was frivolous, the Court may award reasonable expenses to the prevailing party.

Sec. 12. Effective Date.

This Article shall become effective January 1, 2009.

Description of Effect

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

- Preventing state and local tax increases and new multi-year indebtedness except when referred to voters by 2/3 of the Nevada Legislature or of the local governing board, and passed by a majority of voters casting ballots at a general election (§ 2);
- Limiting spending increases by the state, and by cities and counties chartered by the state, to inflation plus percentage change in population; allowing increases of these limits by the amount of voter-approved tax increases (§§ 4, 8);
- If state or city revenues exceed spending limits, requiring the deposit of part of these revenues into a state Emergency Reserve Fund and Budget Stabilization ("Rainy Day") Fund, or a local Budget Reserve Fund;
- Rebating any additional excess revenues to certain taxpayers;
- Changing rules on the use of money in the existing state Rainy Day Fund, including requiring that ¾ of the Legislature, rather than the Governor, declare any emergency (§§ 5, 6, 8);
- Barring the state from imposing "unfunded mandates" on cities and counties or "shifting" costs to local governments (§ 7);
- Providing for certain other important substantive changes to the Constitution (§§ 1, 9, 10);
- Allowing suit for enforcement (§ 11).

County of _____ (Only a registered voter of this county may sign below)

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AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say:

(1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that I believe them to be genuine signatures; and (6) that each individual who signed was at the time of signing a registered voter in the county of his or her residence.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath