

**NOTICE OF ELECTION TO  
INCREASE TAXES  
ON A CITIZEN PETITION**

**NOTICE OF ELECTION TO  
INCREASE TAXES  
ON A REFERRED MEASURE**

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**STATEWIDE ELECTION DAY IS  
Tuesday, November 5, 2013**

Voter service and polling centers open 7 a.m. to 7 p.m.

This election is a mail ballot election. For information about voter service and polling centers, please contact your county election office. Contact information for county election offices appears inside the back cover of this booklet.

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**2013 STATE BALLOT  
INFORMATION BOOKLET**

**Legislative Council of the  
Colorado General Assembly**

*Research Publication No. 626-1*

## Voter "Cheat Sheet" for Measures on the 2013 Ballot

		YES	NO
Amendment 66:	Funding for Public Schools	<input type="checkbox"/>	<input type="checkbox"/>
Proposition AA:	Retail Marijuana Taxes	<input type="checkbox"/>	<input type="checkbox"/>

***\*\*This is not a ballot\*\****

A **YES/FOR** vote on any ballot issue is a vote **IN FAVOR OF** changing current law or existing circumstances, and a **NO/AGAINST** vote on any ballot issue is a vote **AGAINST** changing current law or existing circumstances.

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September 10, 2013

This booklet provides information on the two statewide measures on the November 5, 2013, ballot — Amendment 66 and Proposition AA.

The state constitution requires the nonpartisan research staff of the General Assembly to prepare analyses of statewide ballot measures and distribute them in a ballot information booklet to registered voter households. Each analysis includes a description of the measure and major arguments for and against. Careful consideration has been given to the arguments in an effort to fairly represent both sides of the issue. It also includes an estimate of the fiscal impact of the measure. More information on the fiscal impact of measures can be found at: [www.coloradobluebook.com](http://www.coloradobluebook.com).

### *Amendments and Propositions*

A measure placed on the ballot through the signature-collection process that amends the state constitution is labeled an "Amendment," followed by a number. A measure placed on the ballot by the state legislature that amends the state statutes is labeled a "Proposition," followed by a double letter.

## **Amendment 66**

Amendment 66 proposes changes to the state constitution and state statute. Voter approval is required in the future to change any constitutional measure adopted by the voters, although the legislature may adopt statutes that clarify or implement these constitutional measures as long as they do not conflict with the constitution. The state legislature, with the approval of the Governor, may change any statutory measure in the future without voter approval.

Following the analysis of Amendment 66 are the title that appears on the ballot and the legal language of the measure, including a notation that the measure changes the constitution and statute. The legal language shows new language in capitalized letters and language that is being eliminated in strikeout type.

## **Proposition AA**

Proposition AA is a question referred to the voters by the state legislature. During the 2013 legislative session, the legislature approved House Bill 13-1318, a bill that proposes an excise tax and a sales tax on retail marijuana. Voter approval is required before these taxes can be imposed. For Proposition AA, the question referred to the ballot by the state legislature in House Bill 13-1318 follows the analysis.

## **Information on Local Election Officials**

The booklet concludes with the addresses and telephone numbers of local election officials. Your local election official can provide you with information on mail ballots, voter service and polling centers, and mail ballot drop-off locations.

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Contact information for county election offices appears inside the back cover of this booklet.

This publication, as well as a link to the full text of the fiscal impact statement for each measure, can be found at: [www.coloradobluebook.com](http://www.coloradobluebook.com).

# ANALYSIS

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## Amendment 66 Funding for Public Schools

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Amendment 66 proposes amending the Colorado Constitution and the Colorado Statutes to change how the state funds public preschool through twelfth grade (P-12) education by raising taxes to increase the amount of money available, changing how the state distributes funding to school districts, and requiring that a fixed percentage of revenue from certain state taxes be annually set aside for schools. Specifically, the measure:

- ◆ raises the state individual income tax rate from 4.63 percent to 5.0 percent on the first \$75,000 of taxable income and to 5.9 percent on any taxable income over \$75,000 and deposits the additional tax revenue in a separate fund to increase public education funding;
- ◆ implements legislation passed by the state legislature creating a new formula for allocating state and local funding to school districts;
- ◆ repeals the constitutional requirement that base per pupil funding for public education increase by at least the rate of inflation annually; and
- ◆ requires that at least 43 percent of state income, sales, and excise tax revenue, collected at existing tax rates, be set aside annually to pay for public education.

### Summary and Analysis

**Who pays for P-12 public education?** In budget year 2012-13, about \$5.5 billion of P-12 public education funding was paid from state and local taxes on individuals and businesses, including state income and sales tax and local property and vehicle ownership tax. Almost all of this revenue is allocated to school districts through a formula in state law. The rest provides state assistance for other programs, such as transportation and special education. Additionally, districts received about \$2.6 billion in operating revenue outside the funding formula. This includes federal funding for all districts and fees assessed by all

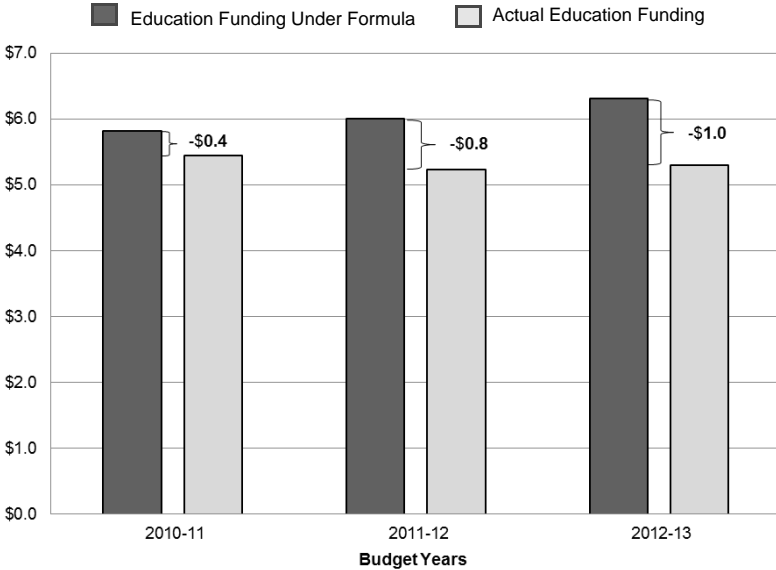
districts. It also includes local revenue that was approved by voters in 114 of 178 districts.

Formula funding for each school district begins with the same amount of funding per student, known as base per pupil funding. The base funding amount is then adjusted upward for each school district, depending on particular district characteristics, to determine a final per pupil funding amount. These characteristics include the total number of students, the local community's cost of living, and the percentage of students from lower-income households.

Currently, the state constitution requires that the base funding amount increase every year by at least inflation. The constitution also specifies that the State Education Fund receive about 7.2 percent of all income tax revenue to support the annual increase in base per pupil funding.

The recent recession reduced the amount of state and local tax revenue available for P-12 public education funding. In each of the past three budget years, the decline in state revenue caused the legislature to reduce the amount of state money going to school districts below what would have been required by the funding formula. Figure 1 compares formula funding before this legislative change with actual funding for each of the last three budget years. For example, in budget year 2012-13, actual funding was \$1.0 billion below what the funding formula would have required.

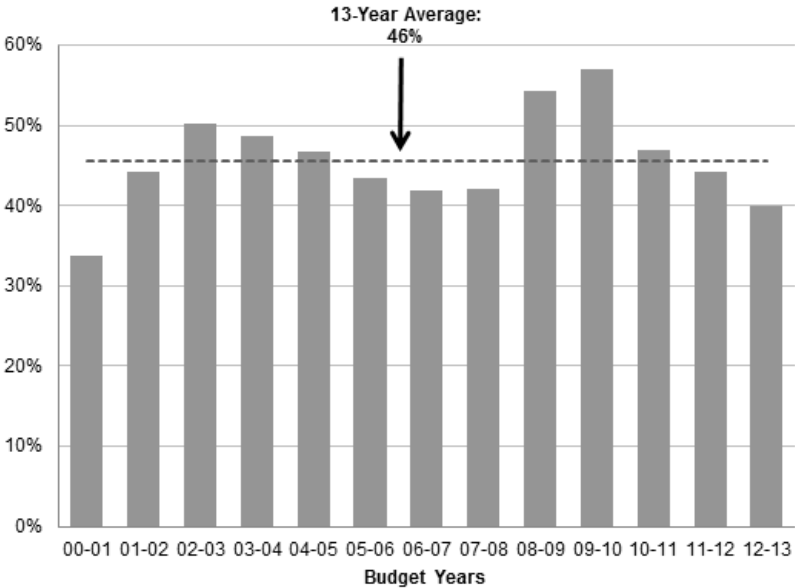
**Figure 1. Formula Funding Compared to Actual Funding  
Budget Years 2010-11 through 2012-13  
(in Billions)**



**Education in the state budget.** P-12 public education funding is the largest piece of the state's operating budget. Since budget year 2000-01, the share of state income, sales, and excise tax revenue spent on P-12 public education has ranged from 34 to 57 percent, and averaged 46 percent. In the last budget year, this share was 40 percent. Figure 2 displays P-12 public education funding as a percent of total state income, sales, and excise tax revenue for budget years 2000-01 through 2012-13, and the overall average during this period.



**Figure 2. Share of State Income, Sales, and Excise Tax Revenue Dedicated to Total P-12 Public Education Budget Years 2000-01 to 2012-13**



**Amendment 66 establishes a minimum level of education funding.** The measure requires that at least 43 percent of state income, sales, and excise tax revenue, collected at existing tax rates, be annually deposited in the State Education Fund to be used on education-related spending. This effectively establishes a constitutional minimum funding level for education that is slightly less than the average share that has been spent on P-12 public education over the last 13 years (see Figure 2), but is an increase from the portion allocated in the 2012-13 budget year. The measure also removes the existing constitutional requirement that the base per pupil amount increase annually by at least inflation, and eliminates the transfer of about 7.2 percent of income tax revenue to the State Education Fund.

**Amendment 66 increases taxes to provide additional revenue for public education.** The measure increases the state individual income tax rate to create new revenue for P-12 public education. Currently, Colorado taxpayers pay a flat individual income tax rate of 4.63 percent on Colorado taxable income. In 1987, the state moved

from a graduated income tax structure to a single tax rate of 5.0 percent. The rate was reduced to 4.63 percent in 2000. While the measure does not affect the state corporate income tax rate, small businesses that choose to report their business income on individual income tax returns will also see their state income taxes increase.

Beginning in tax year 2014, Amendment 66 establishes a two-tiered income tax rate. Individual income tax rates will increase from 4.63 percent to 5.0 percent on the first \$75,000 of state taxable income, and to 5.9 percent on any taxable income above the \$75,000 threshold. The state legislature may adjust this income threshold annually by inflation.

Imposition of this two-tiered tax rate is estimated to increase individual income tax revenue to the state by \$950 million in budget year 2014-15, the first full year of implementation. This new revenue must be placed in the State Educational Achievement Fund created by this measure, and may only be used to fund P-12 public education. The new revenue is exempt from state and school district spending limitations contained in the state constitution.

The two-tiered tax rate structure will have different impacts on taxpayers, depending on their household income. Table 1 shows the estimated change in the yearly state income tax liability for four representative households with different income levels. Under the new structure, an estimated 68 percent of households in Colorado will see their individual income taxes increase by 8 percent, while the remaining 32 percent will see greater increases.

**Table 1. State Individual Income Tax Increases for Representative Households under Amendment 66**

	Gross Income*	Colorado Taxable Income**	Current Law State Income Tax Liability	Amendment 66 State Income Tax Liability	Amount of Annual Increase	Percent Annual Increase
Household A	\$50,000	\$26,300	\$1,218	\$1,315	\$97	8%
Household B	\$100,000	\$65,600	\$3,037	\$3,280	\$243	8%
Household C	\$150,000	\$109,900	\$5,088	\$5,809	\$721	14%
Household D	\$200,000	\$154,000	\$7,130	\$8,411	\$1,281	18%

\* In 2011, Colorado's median gross household income was \$55,000.

\*\*Taxable income totals for individual households may vary from the averages displayed in Table 1.

***Amendment 66 triggers a new funding formula in***

**Senate Bill 13-213.** Amendment 66 replaces the current statutory formula used to allocate state and local funding to school districts. Amendment 66 triggers implementation of Senate Bill 13-213, enacted during the 2013 legislative session and signed by the Governor. The bill's new allocation formula also begins with a base per pupil amount, but it changes how the base is adjusted. It places more emphasis on students who are at risk of academic failure, defined as students eligible for free- or reduced-price lunch through the federal School Lunch Program, or who are English language learners.

The bill also increases funding for kindergarten and preschool students, and allocates a portion of state P-12 education funding to help implement recent educational reforms passed by the state legislature. It also changes the way that school districts calculate student enrollment. Under current law, student enrollment is based on a count that occurs once during a specified period in October. Under Senate Bill 13-213, starting in the 2017-18 school year, student funding will be based on average daily enrollment throughout the school year.

The bill provides school principals with more control over how money will be spent in their schools. This is intended to help students who are deemed to be at risk of academic failure achieve academic targets. The bill also requires a periodic study of the increases in academic achievement resulting from the additional funding and a public, school-specific accounting of administrative and teacher expenses.

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*For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2013, election, go to the Colorado Secretary of State's elections center website hyperlink for ballot and initiative information:*

*[www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html](http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html)*

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**Arguments For**

1) One of government's most important functions is to provide children with a high-quality education. To improve schools, the state needs a long-term solution that is innovative, accountable for results, and transparent to taxpayers. The additional money provided in this measure allows local boards of education to target areas where research suggests that investments are likely to produce improved student outcomes, such as ensuring effective teachers are in the classroom, reducing class sizes, investing in preschool and full-day kindergarten, upgrading classroom technology, and giving principals and teachers more control over budgeting decisions in their schools.

2) Investing in public education is the best way to ensure a strong Colorado economy capable of competing in today's global market. One of the top priorities of businesses seeking a new location is identifying a well-educated workforce. Since budget year 2008-09, the state legislature has severely cut P-12 funding, with funding for the 2012-13 school year \$1.0 billion below what the funding formula would have required. Restoring this funding shortfall not only benefits the state's schools and communities, but also provides a positive signal to companies looking to relocate or to expand in Colorado.

3) The measure simultaneously restores funding to public schools that have suffered severe budget cuts and provides taxpayers with needed accountability by measuring how the increased investment will affect student achievement. The state will be required to prepare a return on investment study and a cost study to identify funding deficits that affect the performance of school districts and the academic achievement of students. The state will also make detailed expenditure data for each school and district available to the general public, allowing for comparisons between schools.

## **Arguments Against**

1) Amendment 66 is a \$950 million tax increase that may impede economic expansion at a time when the state's economy is still recovering. Increasing state income taxes reduces the money that households have to spend or save. As a result, consumer spending and overall economic activity may also decline, negatively impacting the competitiveness of Colorado businesses. The state currently has adequate financial resources to implement Senate Bill 13-213 for the next year without a tax increase. The legislature set aside \$1.1 billion in budget year 2012-13 and an estimated \$290 million in budget year 2013-14 for P-12 public education. These recent set-asides are indicative of an expanding economy that may permit adequate investment in P-12 public education without additional tax revenue.

2) This measure imposes an additional tax burden on state taxpayers without any guarantee of increased academic achievement. Senate Bill 13-213 makes incremental changes to the school funding allocation formula without providing significant educational reform. This approach lacks real accountability as the new funding formula does not reward schools or districts that show gains in student achievement. Amendment 66 leaves in place an outmoded system of delivering education that has not shown significant measurable improvements for students on state assessments.

3) Under the measure, taxpayers in some school districts will pay more in new taxes than these districts will receive in new revenue. All individuals will see a state income tax increase of at least 8.0 percent to implement the new P-12 education formula, and some will see substantially higher percentage increases. At the same time, under Senate Bill 13-213, 37 of 178 school districts will see increases in funding of less than 8.0 percent. Thus, the measure maintains a funding structure that uses tax revenue from some districts in order to subsidize P-12 education in other districts.

**Estimate of Fiscal Impact**

**State revenue and spending.** Amendment 66 is expected to increase state tax revenue by \$452 million in budget year 2013-14, \$950 million in budget year 2014-15 (the first full year with increased tax revenue), and \$1.0 billion in budget year 2015-16. The amendment requires that all new revenue from the tax increase be used to fund P-12 public education.

**Impact on taxpayers.** The amendment increases individual income tax rates. Income tax rates for individual taxpayers will increase from 4.63 percent to 5.0 percent on the first \$75,000 of state taxable income, and to 5.9 percent on state taxable income above the \$75,000 threshold. The state legislature may adjust this income threshold annually by inflation.

This two-tiered tax rate structure will have different impacts on individual taxpayers, depending on their taxable income levels, as shown in Table 1. For instructions on estimating your household's anticipated tax changes under Amendment 66, please visit the online tax calculator at: [www.colorado.gov/lcs/taxestimator](http://www.colorado.gov/lcs/taxestimator).

**State Spending and Tax Increases**

The state constitution requires that the following fiscal information be provided when a tax increase question is on the ballot:

- 1) the estimated or actual state spending under the constitutional spending limit for the current year and each of the past four years with the overall percentage and dollar change; and
- 2) for the first full year of the proposed tax increase, an estimate of the maximum dollar amount of the tax increase and of state fiscal year spending without the increase.

Table 2 shows the dollar amount of state spending under the constitutional spending limit.

**Table 2. State Spending**

	<b>Actual FY 2009-10*</b>	<b>Actual FY 2010-11</b>	<b>Actual FY 2011-12</b>	<b>Estimated FY 2012-13</b>	<b>Estimated FY 2013-14</b>
State Spending	\$8.57 billion	\$9.43 billion	\$10.27 billion	\$11.12 billion	\$11.50 billion
Four-Year Dollar Change in State Spending: <b>\$2.93 billion</b>					
Four-Year Percent Change in State Spending: <b>34.2 percent</b>					

\*FY = fiscal year. The state's fiscal (or budget) year runs from July through June.

The numbers in Table 2 show state spending from 2010 through 2014 for programs that were subject to the constitutional spending limit during those years. However, the constitution allows a program that operates similarly to a private business to be exempt from the limit if it meets certain conditions. Because the exempt status of some programs has changed during the last five years, the numbers in Table 2 are not directly comparable to each other.

Table 3 shows the revenue expected from the increased income tax rate; state fiscal year spending without these taxes for FY 2014-15, the first full fiscal year for which the increase would be in place; and the sum of the two.

**Table 3. Estimated State Fiscal Year Spending and the Proposed Tax Rate Increase**

	<b>FY 2014-15 Estimate</b>
State Spending Without the New Taxes	\$12.08 billion
Revenue from the New Income Taxes	\$0.95 billion
State Spending Plus the New Taxes	\$13.03 billion



## TITLES AND TEXT

The ballot title below is a summary drafted by the professional staff of the offices of the Secretary of State, the Attorney General, and the legal staff for the General Assembly for ballot purposes only. The ballot title will not appear in the Colorado Constitution or Colorado Revised Statutes. The text of the measure that will appear in the Colorado Constitution and Colorado Revised Statutes below was drafted by the proponents of the initiative. The initiated measure is included on the ballot as a proposed change to current law because the proponents gathered the required amount of petition signatures.

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**Amendment 66**  
**Funding for Public Schools**  
(Constitutional and Statutory Amendment)

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**Ballot Title:** SHALL STATE TAXES BE INCREASED BY \$950,100,000 ANNUALLY IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED THEREAFTER BY AMENDMENTS TO THE COLORADO CONSTITUTION AND THE COLORADO REVISED STATUTES CONCERNING FUNDING FOR PRESCHOOL THROUGH TWELFTH-GRADE PUBLIC EDUCATION, AND, IN CONNECTION THEREWITH, INCREASING THE CURRENT STATE INCOME TAX RATE ON INDIVIDUALS, ESTATES, AND TRUSTS AND IMPOSING AN ADDITIONAL RATE SO HIGHER AMOUNTS OF INCOME ARE TAXED AT HIGHER RATES; REQUIRING THE RESULTING INCREASES IN TAX REVENUES BE SPENT ONLY FOR IMPROVEMENTS TO PRESCHOOL THROUGH TWELFTH-GRADE PUBLIC EDUCATION; ALLOWING ALL TAX REVENUES ATTRIBUTABLE TO THIS MEASURE TO BE COLLECTED AND SPENT WITHOUT FUTURE VOTER APPROVAL; REQUIRING AT LEAST 43% OF STATE SALES, EXCISE, AND INCOME TAX REVENUES BE DEPOSITED IN THE STATE EDUCATION FUND; AND REPEALING CERTAIN EXISTING PUBLIC EDUCATION FUNDING REQUIREMENTS?

**Text of Measure:**

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In the constitution of the state of Colorado, section 17 of article IX, **amend** (1), (2), and (4) and **add** (6), (7), and (8) as follows:

**Section 17. Education – funding.**

**(1) Purpose.** In state fiscal year 2001-2002 through state fiscal year 2010-2011, the statewide base per pupil funding, as defined by the Public

School Finance Act of 1994, article 54 of title 22, Colorado Revised Statutes, on the effective date of this section, for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at least by the rate of inflation plus an additional one percentage point. ~~In state fiscal year 2011-2012, and each fiscal year thereafter,~~ FOR STATE FISCAL YEARS 2011-2012 THROUGH 2013-2014, the statewide base per pupil funding for public education from preschool through the twelfth grade and total state funding for all categorical programs shall grow annually at a rate set by the general assembly that is at least equal to the rate of inflation.

**(2) Definitions.** (c) "INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING" MEANS THE INCOME TAX CHANGES APPROVED BY THE VOTERS AT THE 2013 GENERAL ELECTION FOR PRESCHOOL AND PUBLIC SCHOOL KINDERGARTEN THROUGH TWELFTH GRADE FUNDING.

**(4) State education fund created.** (a) There is hereby created in the department of the treasury the state education fund. Beginning on the effective date of this measure, AND THROUGH JUNE 30, 2014, all state revenues collected from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall be deposited in the state education fund. Revenues generated from a tax of one third of one percent on federal taxable income, as modified by law, of every individual, estate, trust and corporation, as defined in law, shall not be subject to the limitation on fiscal year spending set forth in article X, section 20 of the Colorado constitution. BEGINNING IN STATE FISCAL YEAR 2014-2015, THE STATE EDUCATION FUND SHALL, AT A MINIMUM, RECEIVE FORTY-THREE PERCENT OF SALES, EXCISE, AND INCOME TAX REVENUE COLLECTED IN THE GENERAL FUND IN A MANNER AS TO EQUAL SUCH PERCENTAGE IN RELATION TO THE REVENUE GENERATED BY THE TAX RATES IN EFFECT ON DECEMBER 31, 2012 NET OF ANY REFUNDS REQUIRED BY SECTION 20, SUBSECTIONS (3)(c) AND (7) OF ARTICLE X OF THIS CONSTITUTION. All interest earned on monies in the state education fund shall be deposited in the state education fund and shall be used before any principal is depleted. Monies remaining in the state education fund at the end of any fiscal year shall remain in the fund and not revert to the general fund.

**(6) STATE EDUCATIONAL ACHIEVEMENT FUND.**

(a) THE STATE EDUCATIONAL ACHIEVEMENT FUND IS CREATED IN THE STATE TREASURY.

(b) THE DEPARTMENT OF REVENUE OR ITS SUCCESSOR AGENCY SHALL ANNUALLY DETERMINE THE AMOUNT OF THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING. SUCH AMOUNTS SHALL BE DEPOSITED IN THE STATE EDUCATIONAL ACHIEVEMENT FUND.

(c) THE STATE EDUCATIONAL ACHIEVEMENT FUND SHALL BE APPROPRIATED TO BENEFIT THE EDUCATION OF PARTICIPANTS IN PRESCHOOL PROGRAMS AND PUBLIC SCHOOL KINDERGARTEN THROUGH TWELFTH GRADE STUDENTS BY IMPLEMENTING EDUCATIONAL REFORMS AND PROGRAMMATIC ENHANCEMENTS, ENACTED BY THE COLORADO GENERAL ASSEMBLY.

(d) THE STATE EDUCATIONAL ACHIEVEMENT FUND SHALL BE AUDITED ANNUALLY BY THE STATE AUDITOR TO ENSURE COMPLIANCE WITH THIS ARTICLE. THE RESULTS OF SUCH AUDIT SHALL BE A PUBLIC DOCUMENT THAT IS TRANSMITTED TO THE GOVERNOR, THE PRESIDENT AND MINORITY LEADER OF THE SENATE, AND THE SPEAKER AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES. SUCH AUDIT SHALL BE CONSPICUOUSLY PLACED ON THE WEBSITES OF THE STATE AUDITOR AND THE COLORADO DEPARTMENT OF EDUCATION OR THEIR SUCCESSOR AGENCIES.

(e) ALL INTEREST EARNED ON MONIES IN THE STATE EDUCATIONAL ACHIEVEMENT FUND SHALL BE DEPOSITED IN THE STATE EDUCATIONAL ACHIEVEMENT FUND AND SHALL BE USED BEFORE ANY PRINCIPAL IS DEPLETED. MONIES REMAINING IN THE STATE EDUCATIONAL ACHIEVEMENT FUND AT THE END OF ANY FISCAL YEAR SHALL REMAIN IN THE FUND AND NOT REVERT OR BE TRANSFERRED TO THE GENERAL OR ANY OTHER FUND.

**(7) NEW REVENUE TO SUPPLEMENT PREVIOUS YEAR EDUCATION FUNDING.**

REVENUES COLLECTED FROM THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING SHALL BE USED TO SUPPLEMENT REVENUES THAT WERE APPROPRIATED BY THE GENERAL ASSEMBLY IN THE PREVIOUS FISCAL YEAR FOR KINDERGARTEN THROUGH TWELFTH GRADE AND PRESCHOOL EDUCATION AND SHALL NOT BE USED TO SUPPLANT ANY PORTION OF THOSE PREVIOUSLY APPROPRIATED REVENUES.

**(8) REVENUE AND SPENDING LIMITATIONS.** ALL REVENUES ATTRIBUTABLE TO THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING OR OTHERWISE ADDRESSED BY SUBSECTION (6) SHALL BE COLLECTED AND SPENT AS VOTER-APPROVED REVENUE CHANGES WITHOUT REGARD TO ANY LIMITATION ON REVENUE, SPENDING, OR APPROPRIATIONS, CONTAINED IN SECTION 20 OF ARTICLE X OF THIS CONSTITUTION OR ANY OTHER LAW. SPENDING OF SUCH REVENUE, CONSISTENT WITH THE EXPRESSED INTENTION OF THE VOTERS AT THE 2013 ELECTION, SHALL REQUIRE NO ADDITIONAL VOTER APPROVAL AT ANY STATE OR LOCAL ELECTION.

**SECTION 2.** In the constitution of the state of Colorado, section 20 of article X, **amend (8)**:

**(8) Revenue limits.** (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge; EXCEPT THAT MULTIPLE RATES SHALL APPLY TO TAXABLE NET INCOME OF INDIVIDUALS, TRUSTS, AND ESTATES, IF SPECIFIC RATE INCREASES IN EXCESS OF THE TAX RATE IN EFFECT ON THE DAY OF AN ELECTION ARE APPROVED BY VOTERS FOR THE PURPOSE OF PROVIDING AN INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING.

**SECTION 3.** In Colorado Revised Statutes, 39-22-104, amend (1.7) as follows:

**39-22-104. Income tax imposed on individuals, estates, and trusts – single rate – definitions – repeal.** (1.7) Except as otherwise provided in section 39-22-627, subject to subsection (2) of this section, with respect to taxable years commencing on or after January 1, 2000, a tax of four and sixty-three one hundredths percent is imposed on the federal taxable income, as determined pursuant to section 63 of the internal revenue code, of every individual, estate, and trust. IN ADDITION TO THE TAX RATE AUTHORIZED IN THIS SUBSECTION ON FEDERAL TAXABLE INCOME OF INDIVIDUALS, ESTATES, AND TRUSTS, AN INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING SHALL BE IMPOSED ON THE FEDERAL TAXABLE INCOME OF SUCH TAXPAYERS:

(a) UP TO AND INCLUDING \$75,000, AT THE RATE OF THIRTY-SEVEN ONE HUNDREDTHS PERCENT; AND

(b) OVER \$75,000, AT THE RATE OF ONE AND TWENTY-SEVEN ONE HUNDREDTHS PERCENT.

THE GENERAL ASSEMBLY MAY ANNUALLY ADJUST THE INCOME THRESHOLDS FOR THE INCOME TAX INCREMENT FOR PUBLIC SCHOOL FUNDING FOR INFLATION FROM THE PREVIOUS YEAR.

**SECTION 4. EFFECTIVE DATE.** THESE VOTER-ENACTED PROVISIONS SHALL TAKE EFFECT ON JANUARY 1, 2014.

# ANALYSIS

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## Proposition AA Retail Marijuana Taxes

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Proposition AA

### Proposition AA, if approved, would:

- ◆ impose a 15 percent state excise tax on the average wholesale price of retail marijuana when the product is first sold or transferred by a retail marijuana cultivation facility, with public school construction receiving the first \$40 million of any annual tax revenues collected;
- ◆ impose a 10 percent state sales tax on retail marijuana and retail marijuana products, in addition to the existing 2.9 percent state sales tax, to increase funding for the regulation and enforcement of the retail marijuana industry and to fund related health, education, and public safety costs;
- ◆ direct 15 percent of the revenue collected from the 10 percent state sales tax to cities and counties where retail marijuana sales occur; and
- ◆ allow the state legislature to increase or decrease the excise and sales taxes on retail marijuana so long as the rate of either tax does not exceed 15 percent.

### Summary and Analysis

***Why is this measure on the ballot?*** Proposition AA relates to another measure passed by the voters in November 2012, Amendment 64. Amendment 64 allows for an adult 21 years of age or older to consume or possess up to one ounce of marijuana and requires the state to establish a regulatory structure for the retail marijuana industry. Amendment 64 also requires the state legislature to enact an excise tax on retail marijuana to fund public school construction; however, the Colorado Constitution requires a statewide vote to approve new taxes. The state legislature approved and the Governor signed into law a bill that proposes two new state taxes: an excise tax to be applied to the average wholesale price of retail marijuana when first sold or transferred by a retail marijuana cultivation facility; and a sales tax on retail marijuana and retail marijuana products to increase funding for regulation. Therefore, the state

legislature is submitting to the voters the question of whether to approve additional taxes on retail marijuana. These taxes will not apply to medical marijuana. Regardless of whether the measure passes, beginning on January 1, 2014, existing medical marijuana stores will be eligible for a retail marijuana license unless a city or county has imposed a ban. After October 1, 2014, all applicants are eligible for licensure where no local ban is in place. Without approval of the sales and excise taxes, the new regulatory structure will have to be funded by eliminating or cutting state programs.

**Excise taxes.** An excise tax is a tax on the use or consumption of certain products such as gasoline, alcohol, or cigarettes. The tax is generally collected at the wholesale level and passed on to consumers in the retail price. Retail marijuana cultivation facilities will pay the 15 percent state excise tax when they first sell or transfer marijuana to retail marijuana product manufacturing facilities, retail marijuana stores, or other retail marijuana cultivation facilities. Every six months, the Colorado Department of Revenue will determine an average wholesale price for unprocessed retail marijuana sold by retail marijuana cultivation facilities, and all unprocessed retail marijuana will be taxed at this price. Medical marijuana is not subject to the state excise tax created by the measure, or to any existing state excise tax.

Under Amendment 64, the state excise tax is limited to 15 percent until January 1, 2017, and the state legislature can seek voter approval through another ballot measure to raise the excise tax rate above 15 percent to be effective on or after that date. Each year, the first \$40 million in revenue raised by the excise tax will be credited to the Building Excellent Schools Today program for constructing public schools. The excise tax revenue is estimated to be less than \$40 million annually for at least the first two years. If the amount collected is greater than \$40 million, the excess will be used for marijuana regulation.

**School construction funding through the Building Excellent Schools Today program.** In 2008, the state legislature enacted the Building Excellent Schools Today program to address the limited capacity for many public schools to renew or replace deteriorating facilities with local resources. The program prioritizes funding awards based on issues such as asbestos removal, building code violations, overcrowding, and poor indoor air quality. Program grants are available to public school districts, charter schools, boards of cooperative services, institute charter schools, and the Colorado School for the Deaf and the Blind. Under current law, funding is provided from the State Land Trust, Colorado Lottery spillover funds,

the applicants' matching funds, and interest accrued within the fund itself. Between 2008 and 2012, the program received \$2.15 billion in requests and awarded \$686 million for school construction projects, with local governments allocating an additional \$293 million in matching funds.

**Sales taxes.** The measure also adds a state sales tax to be applied when a consumer purchases retail marijuana or retail marijuana products at a licensed retail marijuana store. The sales tax rate will initially be set at 10 percent. The state legislature can raise or lower the tax rate at any time through legislation, but cannot increase it above 15 percent without further voter approval. The 10 percent state sales tax on retail marijuana is in addition to current state and local sales taxes, which are applied to most retail purchases. All sales taxes will be applied to the retail price paid by the consumer, which includes the 15 percent state excise tax created by the measure. Medical marijuana is not subject to the additional sales tax created by the measure, but remains subject to the existing 2.9 percent state sales tax.

Amendment 64 permits cities and counties to ban retail marijuana cultivation, processing, and sales. However, cities and counties that allow retail marijuana sales to consumers will receive 15 percent of the revenue collected from the 10 percent state sales tax on retail marijuana. The proceeds will be divided according to the percentage of retail marijuana sales within each jurisdiction. The measure is silent on the use of this revenue by cities and counties. Beginning on or before April 1, 2014, and annually through April 1, 2016, the state legislature is required to determine if the percentage of revenue allocated to cities and counties is set at the appropriate level.

**Regulatory activities funded by sales tax revenue.** The Marijuana Enforcement Division (MED) in the Colorado Department of Revenue regulates the cultivation, processing, and sale of both medical and retail marijuana. Medical marijuana licensees are currently operating, but the licensing program for retail marijuana establishments is still being developed. In cities and counties that currently allow medical marijuana sales, licensed retail marijuana stores are authorized to sell retail marijuana beginning on January 1, 2014, unless a local ban is imposed. Revenue generated by the 2.9 percent state sales tax on both medical and retail marijuana and marijuana products, plus revenue from application and licensing fees paid by medical and retail marijuana establishments, will be used to fund the MED. This revenue will fund the regulation of marijuana establishments, including

**Proposition AA**



enforcement of the laws for the testing, tracking, and labeling of retail marijuana and measures to prevent the diversion of retail marijuana to individuals under 21 years old. The revenue from the proposed 10 percent state sales tax will also be used to fund the regulatory structure, as well as related costs for health, education, and public safety, which are not currently funded. The total costs to the state for the implementation of Amendment 64 are projected to be millions of dollars annually.

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*For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2013, election, go to the Colorado Secretary of State's elections center website hyperlink for ballot and initiative information:*

*[www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html](http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html)*

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## **Arguments For**

1) A majority of Colorado voters approved Amendment 64 to allow the sale of retail marijuana within a regulated and taxed market, and passage of this measure is expected to generate the revenue necessary to support the robust regulation of this market. In addition, an effective regulatory system may discourage federal interference with the industry, as the sale of marijuana remains illegal under federal law. Adoption of the additional 10 percent state sales tax is important because the current funding structure for the regulatory system may not be adequate and may require funds to be diverted from other state priorities such as education, public safety, and health care. Without revenue from the 10 percent sales tax, studies that address public safety concerns and educational efforts aimed at preventing the use of marijuana by children may not be adequately funded. As recent audits of the medical marijuana regulatory system have demonstrated, current fees and sales tax revenue may not be adequate to ensure a safe and effective regulatory structure.

2) Colorado schools have a projected \$17.9 billion in school construction needs through 2018, and the proposed state excise tax will make more funding available for these needs, as intended by Amendment 64. This additional funding will help modernize older schools, build new schools, and alleviate health and safety concerns. Also, by increasing the number of projects funded, the school construction industry may see an increase in jobs.

## Arguments Against

1) The new state taxes created by the measure may be so high that they undercut one of the intended purposes of Amendment 64, which is to encourage consumers to purchase marijuana from licensed stores rather than from the underground market. When marijuana is purchased from licensed stores, sales are taxed and limited to consumers 21 years of age or older. By overtaxing a product that is readily available in the underground market, the measure may limit sales from licensed stores and keep consumers in the underground market.

2) Amendment 64 requires the establishment of an excise tax, but does not require the sales tax created by this measure. This second tax was not anticipated by supporters of Amendment 64 and is an unfair tax burden on consumers of marijuana. The state legislature's plan for implementing Amendment 64 includes measures that exceed what is essential to regulate the industry. Revenue from application and licensing fees, as well as the existing 2.9 percent state sales tax on marijuana, can adequately satisfy the regulatory requirements of Amendment 64.

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## Estimate of Fiscal Impact

**State and local revenue.** As shown in Table 1, passage of Proposition AA is estimated to increase state tax revenue by \$67 million annually, which includes \$27.5 million in excise tax revenue and \$39.5 million in state sales tax revenue. Local governments where retail marijuana stores are operating will receive a proportionate share of \$6.0 million based on the percentage of sales in each jurisdiction.

In FY 2011-12, Colorado's medical marijuana industry sold \$199.1 million worth of marijuana to 109,000 patients. Under Amendment 64, retail marijuana sales will be made up of marijuana consumers who transition from the medical marijuana industry, marijuana consumers who currently use unregulated marijuana, and visitors to the state. The revenue estimates assume a wholesale price of \$93.75 per ounce for unprocessed retail marijuana and a retail price of \$201.56 per ounce, of which \$14.06 is excise tax. It is estimated that 2 million ounces of marijuana will be sold by retail marijuana stores each year. The total taxable value of retail marijuana at the wholesale level is estimated to be about \$183.5 million per year, with sales to consumers of retail marijuana totaling approximately \$394.6 million per year.

**Table 1. Estimated State Revenue from Proposition AA  
for Calendar Year 2014**

	<b>Wholesale Sales Subject to Excise Tax</b>	<b>Retail Sales Subject to Sales Tax</b>
Average price per ounce	\$93.75	\$201.56
Total sales	\$183.5 million	\$394.6 million
Tax rate	15%	10%
Total taxes	\$27.5 million	\$39.5 million
Excise taxes to Building Excellent Schools Today Program	\$27.5 million	
Sales taxes to state government (85%)		\$33.5 million
Sales taxes to local governments (15%)		\$6.0 million

**State spending.** The Colorado Department of Revenue will develop a computer system and hire staff to collect, monitor, and enforce both the 15 percent excise tax and the 10 percent sales tax on retail marijuana. The staffing, computer system, and operating expenses are estimated to cost \$4.2 million in the first year of implementation and \$1.3 million annually thereafter. The department is expected to add approximately 22 staff to implement the measure. The remaining funding will be used to fund the regulation of marijuana establishments, including enforcement of the laws for the testing, tracking, and labeling of retail marijuana, measures to prevent the diversion of retail marijuana to individuals under 21 years old, and costs for health, education, and public safety.

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## State Spending and Tax Increases

The state constitution requires that the following fiscal information be provided when a tax increase question is on the ballot:

- 1) the estimated or actual state spending under the constitutional spending limit for the current year and each of the past four years with the overall percentage and dollar change; and
- 2) for the first full year of the proposed tax increase, an estimate of the maximum dollar amount of the tax increase and of state fiscal year spending without the increase.

Table 2 shows the dollar amount of state spending under the constitutional spending limit.

**Table 2. State Spending**

	<b>Actual FY 2009-10*</b>	<b>Actual FY 2010-11</b>	<b>Actual FY 2011-12</b>	<b>Estimated FY 2012-13</b>	<b>Estimated FY 2013-14</b>
State Spending	\$8.57 billion	\$9.43 billion	\$10.27 billion	\$11.12 billion	\$11.50 billion
Four-Year Dollar Change in State Spending: <b>\$2.93 billion</b>					
Four-Year Percent Change in State Spending: <b>34.2 percent</b>					

\*FY = fiscal year. The state's fiscal (or budget) year runs from July through June.

The numbers in Table 2 show state spending from 2010 through 2014 for programs that were subject to the constitutional spending limit during those years. However, the constitution allows a program that operates similarly to a private business to be exempt from the limit if it meets certain conditions. Because the exempt status of some programs has changed during the last five years, the numbers in Table 2 are not directly comparable to each other.

Table 3 shows the revenue expected from the two new taxes for FY 2014-15, the first full fiscal year for which the taxes would be in place; state fiscal year spending without these taxes; and the sum of the two.

**Table 3. Estimated State Fiscal Year Spending and the Proposed New Taxes**

	<b>FY 2014-15 Estimate</b>
State Spending Without the New Taxes	\$12.08 billion
State Revenue from the New Excise and Sales Taxes	\$67 million
State Spending Plus the New Taxes	\$12.15 billion

**Proposition AA**

## QUESTION

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### Proposition AA Retail Marijuana Taxes

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**Question:** SHALL STATE TAXES BE INCREASED BY \$70,000,000 ANNUALLY IN THE FIRST FULL FISCAL YEAR AND BY SUCH AMOUNTS AS ARE RAISED ANNUALLY THEREAFTER BY IMPOSING AN EXCISE TAX OF 15% WHEN UNPROCESSED RETAIL MARIJUANA IS FIRST SOLD OR TRANSFERRED BY A RETAIL MARIJUANA CULTIVATION FACILITY WITH THE FIRST \$40,000,000 OF TAX REVENUES BEING USED FOR PUBLIC SCHOOL CAPITAL CONSTRUCTION AS REQUIRED BY THE STATE CONSTITUTION, AND BY IMPOSING AN ADDITIONAL SALES TAX OF 10% ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS WITH THE TAX REVENUES BEING USED TO FUND THE ENFORCEMENT OF REGULATIONS ON THE RETAIL MARIJUANA INDUSTRY AND OTHER COSTS RELATED TO THE IMPLEMENTATION OF THE USE AND REGULATION OF RETAIL MARIJUANA AS APPROVED BY THE VOTERS, WITH THE RATE OF EITHER OR BOTH TAXES BEING ALLOWED TO BE DECREASED OR INCREASED WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF EITHER TAX DOES NOT EXCEED 15%, AND WITH THE RESULTING TAX REVENUE BEING ALLOWED TO BE COLLECTED AND SPENT NOTWITHSTANDING ANY LIMITATIONS PROVIDED BY LAW?

**Proposition AA**

# NOTES



# NOTES

## LOCAL ELECTION OFFICES

Adams	4430 South Adams County Parkway Brighton, CO 80601-8207	(720) 523-6500
Alamosa	402 Edison Ave., Alamosa, CO 81101	(719) 589-6681
Arapahoe	5334 S. Prince St., Littleton, CO 80166	(303) 795-4511
Archuleta	449 San Juan, Pagosa Springs, CO 81147	(970) 264-8331
Baca	741 Main St., Suite 3, Springfield, CO 81073	(719) 523-4372
Bent	725 Bent Ave., Las Animas, CO 81054	(719) 456-2009
Boulder	1750 33rd St. #200, Boulder, CO 80301	(303) 413-7740
Broomfield	1 DesCombes Drive, Broomfield, CO 80020	(303) 464-5857
Chaffee	104 Crestone Ave., Salida, CO 81201	(719) 539-4004
Cheyenne	51 S. 1st St., Cheyenne Wells, CO 80810	(719) 767-5685
Clear Creek	405 Argentine St., Georgetown, CO 80444	(303) 679-2339
Conejos	6683 County Road 13, Conejos, CO 81129	(719) 376-5422
Costilla	400 Gasper St., San Luis, CO 81152	(719) 937-7671
Crowley	631 Main St., Suite 102, Ordway, CO 81063	(719) 267-5225
Custer	205 S. 6th St., Westcliffe, CO 81252	(719) 783-2441
Delta	501 Palmer #211, Delta, CO 81416	(970) 874-2150
Denver	200 W. 14th Ave., Suite 100, Denver, CO 80204	(720) 913-8683
Dolores	409 N. Main St., Dove Creek, CO 81324	(970) 677-2381
Douglas	125 Stephanie Pl., Castle Rock, CO 80109	(303) 660-7444
Eagle	500 Broadway, Eagle, CO 81631	(970) 328-8726
Elbert	215 Comanche St., Kiowa, CO 80117	(303) 621-3127
El Paso	1675 W. Garden of the Gods Rd., Suite 2220 Colorado Springs, CO 80907	(719) 575-8683
Fremont	615 Macon Ave. #102, Canon City, CO 81212	(719) 276-7340
Garfield	109 Eighth St. #200, Glenwood Spgs, CO 81601	(970) 384-3700, ext. 2
Gilpin	203 Eureka St., Central City, CO 80427	(303) 582-5321
Grand	308 Byers Ave., Hot Sulphur Springs, CO 80451	(970) 725-3065
Gunnison	221 N. Wisconsin, Suite C, Gunnison, CO 81230	(970) 641-7927
Hinsdale	317 N. Henson St., Lake City, CO 81235	(970) 944-2228
Huerfano	401 Main St., Suite 204, Walsenburg, CO 81089	(719) 738-2380
Jackson	396 La Fever St., Walden, CO 80480	(970) 723-4334
Jefferson	3500 Illinois St., Suite #1100, Golden, CO 80401	(303) 271-8111
Kiowa	1305 Goff St., Eads, CO 81036	(719) 438-5421
Kit Carson	251 16th St., Burlington, CO 80807	(719) 346-8638 ext. 301
Lake	505 Harrison Ave., Leadville, CO 80461	(719) 486-1410
La Plata	98 Everett St., Suite C, Durango, CO 81303	(970) 382-6296
Larimer	200 W. Oak St., Ft. Collins, CO 80522	(970) 498-7820
Las Animas	200 E. First St., Room 205, Trinidad, CO 81082	(719) 846-3314
Lincoln	103 Third Ave., Hugo, CO 80821	(719) 743-2444
Logan	315 Main St., Suite 3, Sterling, CO 80751	(970) 522-1544

Mesa	200 S. Spruce St., Grand Junction, CO 81501	(970) 244-1662
Mineral	1201 N. Main St., Creede, CO 81130	(719) 658-2440
Moffat	221 W. Victory Way #200, Craig, CO 81625	(970) 824-9104 ext. 3
Montezuma	140 W. Main St., Suite #1, Cortez, CO 81321	(970) 565-3728
Montrose	320 S. First St., Montrose, CO 81401	(970) 249-3362, ext. 3
Morgan	231 Ensign, Ft. Morgan, CO 80701	(970) 542-3521
Otero	13 W. Third St., Room 210, La Junta, CO 81050	(719) 383-3020
Ouray	541 Fourth St., Ouray, CO 81427	(970) 325-4961
Park	501 Main St., Fairplay, CO 80440	(719) 836-4333 ext. 1
Phillips	221 S. Interocean Ave., Holyoke, CO 80734	(970) 854-3131
Pitkin	530 E. Main St. #101, Aspen, CO 81611	(970) 920-5180 ext. 3
Prowers	301 S. Main St. #210, Lamar, CO 81052	(719) 336-8011
Pueblo	720 N. Main St., Pueblo, CO 81003	(719) 583-6620
Rio Blanco	555 Main St., Meeker, CO 81641	(970) 878-9460
Rio Grande	965 Sixth St., Del Norte, CO 81132	(719) 657-3334
Routt	522 Lincoln Ave. Steamboat Springs, CO 80487	(970) 870-5558
Saguache	501 Fourth St., Saguache, CO 81149	(719) 655-2512
San Juan	1557 Green St., Silverton, CO 81433	(970) 387-5671
San Miguel	305 W. Colorado Ave., Telluride, CO 81435	(970) 728-3954
Sedgwick	315 Cedar St., Julesburg, CO 80737	(970) 474-3346
Summit	208 E. Lincoln Ave., Breckenridge, CO 80424	(970) 453-3479
Teller	101 W. Bennett Ave., Cripple Creek, CO 80813	(719) 689-2951, ext. 5
Washington	150 Ash, Akron, CO 80720	(970) 345-6565
Weld	1401 N. 17th Ave., Greeley, CO 80632	(970) 304-6525
Yuma	310 Ash St., Suite F, Wray, CO 80758	(970) 332-5809