

SB24-144

WRITTEN TESTIMONY OF HERBERT SAMPSON

SENATE FINANCE HEARING FEBRUARY 27, 2024

Members of the Senate Finance Committee,

I oppose SB24-144 because it violates Art. X Sec. 3 of the Colorado Constitution. Thus, not only will the methodology employed not work, but it is per se poor tax policy.

I am sympathetic to the conundrum that the General Assembly finds itself in after the repeal of the Gallagher Amendment and the rise of property values, and by extension property taxes. But there are better ways, constitutional ways, to limit the increase in property taxes.

SB24-144 does not offer a solution. Art X Sec 3 of the Colorado Constitution requires that all property be valued at its Actual Value (a defined term). Actual Value means a property's "Fair Market Value" (FMV). FMV is what a willing buyer would pay for the property from a willing seller, neither being under a compulsion to buy or sell.

The Scheme

The intent of SB24-144 is to limit the increase in property tax values by no more than 6% per bi annual valuation cycle. The first property tax year affected would be 2024, with the bill payable in 2025.

In Colorado our tax appraisal cycle is 2 years long and runs from July 1 of year one to June 30 of year two (e.g. the 2021 cycle ran from July 1, 2021 to June 30, 2023).

The methodology that SB24-144 employs is to limit increases in Actual Value to no more than 6% per biannual valuation period, retroactive to 2021. That will not work because "Actual Value" is a constitutionally defined term that means valuation at what property is really worth. It is not a number that can be manipulated legislatively. Actual Value fluctuates with the market. It goes up if the market value of a property goes up, and goes down if the market goes down.

As a longtime tax attorney, I have become adept at translating tax statutes into English. I read SB24-119 and the fiscal notes in detail and this is what it says:

1. Going forward for 2025 tax bills these are the rules no matter what other parts of the tax law says, and especially the preceding 18 subsections of CRS 39-1-103,
2. Point of Beginning. Even though the 2021 tax cycle is closed, this is the beginning point for all future valuations. We are going to say Actual Value (a defined constitutional term) shall not exceed 1.06 X the FMV for the 2020 tax year.

This is circuitous because the actual proposed language states "...Actual Value of a Property is calculated...[to] not exceed 106% of Actual Value..." Since Actual Value is not a statutory variable, it is not possible for Actual Value to be more or

less than it is. And it is really poor legislative form to define a term by using the term itself.

3. 2025 Tax Bills. Then we are going to apply a multiplier to the 2020 valuation to come up with 2024 tax valuation, which sloshes over to the 2025 tax statement. The formula is:

$$(2020 \text{ Actual Value} \times 1.06) \times 1.06 = \text{maximum 2025 tax value.}$$

4. 2026 Tax Bills and Beyond. Then no matter what the General Assembly has on the books, or may later pass, for this next valuation cycle (2025) and all future valuation cycles we will call a number Actual Value, even if the true FMV is more, according to this formula:

$$(2020 \text{ Actual Value} \times 1.06) \times 1.06 \times 1.06 \text{ (and for each cycle into the future). It can be lower, but can never be higher.}$$

The recurring multiplier language is "...of the same property for the preceding cycle."

So, what does this mean in plain English? It says that by legislative fiat for tax purposes, property values cannot increase more than about 3% year over year, or more than 6% in the aggregate over any two-year tax appraisal cycle.

The sticker for this proposal is that pesky constitutional provision that says the starting point is what the property is really worth – its Actual Value. So, if a property sells for \$100,000 on July 1, 2023 and the economics are such that it is worth \$200,000 on June 30, 2025, the GA cannot say by statute that it is only worth \$112,360 on June 30, 2025. That violates the constitution.

Constitutional Provisions and Interpretation.

The starting point for all tax analysis is with the Colorado Constitution. The germane provision of the constitution is embedded within Colo. Const. Art. X, Section 3(1)(a):

“(a) Each property tax levy shall be uniform upon all real and personal property not exempt from taxation under this article located within the territorial limits of the authority levying the tax. The **actual value of all real and personal property not exempt from taxation** under this article shall be determined under general laws, **which shall prescribe such methods and regulations as shall secure just and equalized valuations for assessments of all real and personal property not exempt from taxation under this article.** Valuations for assessment shall be based on appraisals by assessing officers to determine the actual value of property in accordance with provisions of law, which laws shall provide that actual value be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal. However, the actual value of residential real property shall be determined solely by consideration of cost approach and market approach to appraisal; and, however, the actual value of agricultural lands, as defined by

law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law.”

Actual Value means “fair market value”, FMV. Denver v. Bd. of Assessment Appeals, 848 P.2d 355 (Colo. 1993):

“See [Colo. Const. art. X, § 3\(1\)\(a\)](#). Actual value has been defined as the fair market value of the property during the base year period. 8 [Board of Assessment Appeals v. Arlberg Club](#), 762 P.2d 146, 151 (Colo. 1988). See Black’s Law Dictionary 35 (6th ed. 1990) (“actual value,” and “market value” may be used as interchangeable terms).”

And FMV means what a willing buyer under no compulsion to buy would pay for the property. Board of Assessment Appeals v. Colorado Arlberg Club, 762 P.2d 146 (Colo. 1988):

“We have explained that market value is “what a willing buyer would pay a willing seller under normal economic conditions.” [May Stores Shopping Centers, Inc. v. Shoemaker](#), 151 Colo. 100, 110, 376 P.2d 679, 683 (1962) (tax case); [Fellows v. Grand Junction Sugar Co.](#), 78 Colo. 393, 242 P. 635 (1925) (tax case); see also [Goldstein v. Denver Urban Renewal Auth.](#), 192 Colo. 422, 560 P.2d 80 (1977) (eminent domain case); [Department of Highways v. Schulhoff](#), 167 Colo. 72, 445 P.2d 402 (1968) (eminent domain case); [Vivian v. Board of Trustees](#), 152 Colo. 556, 383 P.2d 801 (1963) (eminent domain case). See generally CJI-Civ.2d 33:3 (defining reasonable market value for eminent domain proceedings). Our definition is consistent with the basic definition of market value used by appraisers:

The most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.”

The words in Art X, Sec. 3 “shall be determined under general laws” are not weasel words that give license to the GA to mess with what the Actual Value is. The general laws referred to in Art X Sec. 3 are those which dictate the methodology of appraisal and equalization. The General Assembly has no power to set a value disconnected from economic reality as the actual value of a piece of property.

Summary

The Colorado Constitution leaves no wiggle room for the General Assembly to set arbitrary boundaries on how much Actual Value can rise, nor how much it might fall, between valuation periods. The fair market value must be determined and used.

Once FMV is determined the GA can get imaginative with discounts and credits to lower the assessed valuation or the percentage of total tax raised statewide for various classes of property – residential and commercial.

My experience with tax matters is to adhere strictly to the Constitution, not veer off the plain language center course.

Colorado already has enough problems with property tax, valuation, and classification. Do not make matters worse by enacting an unconstitutional provision. Because then the counties have to unwind things and maybe give money back.

I would urge the Committee to reject the bill.

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