

THE DENVER POST

A fee or a tax? Guarding TABOR against lawsuits

By Brian Vande Krol

Guest Commentary

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TABOR author Douglas Bruce collects political signs to be placed in high traffic areas of Colorado Springs rebuffing efforts against Referendum C, amending TABOR, in November 2005. (Chuck Bigger, Special to The Denver Post)

To fee, or not to fee. That is the question.

Whether 'tis Nobler in the wallet to suffer

The Fees and Enterprises of outrageous Governance,

Or to file suits against CBE,

And by opposing end them?

A Colorado organization has filed an appeal to overturn a Denver District Court finding about the Taxpayer's Bill of Rights (TABOR). We believe the trial court erred in finding that Colorado's Bridge Enterprise (CBE) conforms to TABOR.

In 2010, the legislature created the CBE to repair and maintain bridges. The CBE was called an "enterprise" so it could issue debt without a vote of the people, as is otherwise required by TABOR. The CBE already has issued \$300 million in debt and plans more (up to \$1 billion).

An enterprise is a government-owned, self-supporting business, which is exempt from TABOR restrictions. The legislature also authorized the CBE to impose a new charge on vehicle registrations. Known as the bridge safety surcharge, it was designated for repair and maintenance of state-owned bridges. But the CBE had a problem. Because the charge is not a fee for service, it functioned like a tax, which requires a vote of the people.

Disinclined to allow Colorado's constitution to stand in the way, the CBE called it a fee and hoped the label alone would be enough to avoid a tax election.

In 2012, the TABOR Foundation sued to reverse the tax and stop the issuance of more debt, arguing that the fee is actually a tax, and that the CBE is not a qualified enterprise and cannot issue debt without a vote of the citizens of Colorado.

If the bridge surcharge survives the legal challenge, the courts will have established a method by which government can fund most anything by creating enterprises, assessing fees, and issuing debt. They will have stripped Coloradans of their constitutionally protected rights under TABOR.

"There have been violations of basic common sense and principles of good government," said TABOR Foundation chairman Penn Pfiffner. "The concept and construct of this dishonest and devious scheme must not stand."

Unfortunately, the Denver District Court ruled in favor of the CBE. The TABOR Foundation appealed the decision and filed its opening brief on Jan. 21.

In the appeal, Mountain States Legal Foundation staff attorney Jim Manley, representing the TABOR Foundation, clearly refutes the trial court's conclusions. Citing ample case law, the TABOR Foundation presented an appeal that should be difficult to deny. For example, it demonstrated that the district court's decision would cause an "absurd result."

The court ruled that the bridge surcharge is a fee because it is collected for a specific purpose, but using this illogic, any tax could be called a fee by declaring its specific purpose. For example, school property taxes could become "school fees."

Supporters of TABOR suffered a minor setback on March 7, when a decision by the 10th U.S. Circuit Court of Appeals allowed another lawsuit to proceed. State representatives, including Andy Kerr and Dickie Lee Hullinghorst, sued Gov. John Hickenlooper to eviscerate TABOR and give legislators unchecked power to raise taxes. The lawsuit claims that TABOR violates the U.S. Constitution's guarantee of a republican form of government. However, as constitutional law scholar Rob Natelson wrote, "Although most of the Founders were not devotees of direct democracy, they did make it clear that it was consistent with the republican form for the people to exercise the legislative power directly." The Founders would have acknowledged TABOR as acceptable to a republican form of government.

The decision was only about standing, not the issues. The path to unlikely victory for that lawsuit is a long one. Now that it may return to trial, it will most certainly end up before the Supreme Court. In the meantime, success of the CBE lawsuit will provide a critical and timely check on outrageous governance.

Brian Vande Krol of Westminster is director of the TABOR Foundation.

COLORADO SPRINGS GAZETTE

Colorado highway funding pie pits urban against rural interests

By [Garrison Wells](#) Updated: April 7, 2014 at 9:04 am • Published: April 7, 2014 | 12:00 am

Officials and lobbying groups are concerned that new formulas being considered for transportation funding in Colorado may shortchange rural areas.

Areas that might feel the pinch if the Colorado Department of Transportation starts using population as one of its gauges for doling out funding include the Western Slope, much of Southern Colorado and Eastern Colorado, including the towns of Calhan and Ellicott in Eastern El Paso County, according to the lobbying groups.

"That is a fear," said Cathy Garcia, president and CEO of Action 22, a coalition of 22 southeast Colorado counties. "If you base it on population, by the time 10 years roll around, rural Colorado will have lost a lot."

The state's three big lobbying groups, Action 22, Club 20 and Progressive 15 have joined forces to do a transportation survey in each of the regions.

The idea is to highlight needs in these areas and suggestions about what can be done to help funding transportation projects.

Much of Colorado transportation funding now is based on vehicle miles traveled.

"The new formulas under discussion all include using population as a funding mechanism which could reduce funding in out-state areas," Garcia said.

One of the questions in the survey asks if a sales tax, income tax or gas tax would help fund transportation needs in Colorado, Garcia said.

Those questions come after a poll in the Denver metro area showed that there wasn't any interest in a .7 percent tax increase for transportation in Colorado, Garcia said. Transportation didn't rank highly for respondents, whose priorities leaned toward economic development.

This latest poll, she said "could get the discussion going again."

"We see this as a major need," Garcia said. "Our transportation infrastructure is very important. We need the roads, we need passing lanes, we need safety issues addressed. There should be no separation from urban and rural roads. It should all be linked."

Not everyone is against population as a measurement for funds.

Using population "would benefit our metropolitan area," said Jason Wilkinson, spokesman for the Pikes Peak Area Council of Governments.

"Any equation you come up with will favor somebody," he said. "The urban areas realize that they have to subsidize the rural areas to an extent. We all enjoy a drive through the mountains or if you are going point-to-point. We get that."

There's little concern about the potential of unfair funding for Woodland Park, west of Colorado Springs on Highway 24.

"It's always an issue now because of the reduction of transportation funds," said David Turley, Woodland Park mayor. "But I'm pretty comfortable that when we need it, we get the funds."

Turley pointed out that Woodland Park also benefits from major urban area projects such as the widening of Interstate 25 from north Colorado Springs to Monument and improvements to the I-25, Cimarron Avenue interchange.

Still, he said, "It has to be balanced."

The transportation department "has had cutbacks in money and they're trying to figure out how to do as much as they can. I'm not too worried about us holding our own. If we don't feel comfortable with what's going on in smaller towns like Woodland Park, we go to PPACG and weigh in on it. PPACG makes a big difference," Turley said.

Among poll questions:

How would you rate the roads in your county?

How would you rate the roads you travel in other parts of Colorado?

Were you aware that the budget for Colorado Department of Transportation's budget has decreased by \$500 million since 2008? Are you willing to pay more money for transportation to improve the state system?

Read more at <http://gazette.com/colorado-highway-funding-pie-pits-urban-against-rural-interests/article/1517749#X21taYHBzpYVwh8a.99>

DENVER BUSINESS JOURNAL

Apr 7, 2014, 7:08am MDT

Highway funding formula change could mean urban vs. rural war in Colorado



Mark Harden

News Director-*Denver Business Journal*

A change in the way money for transportation funding is doled out in the state could lead to battles between Colorado's cities and rural areas for highway money.

[The Colorado Springs Gazette reports](#) that the Colorado Department of Transportation is considering using population as one trigger for allocating highway funds.

And that could mean less money for the Western Slope as well as large areas of southern and eastern Colorado.

Mark Harden directs print and digital news content for the Denver Business Journal and writes for the "17th & Lincoln" blog. Email: mharden@bizjournals.com. Phone: 303-803-9227.

The following is an email distributed by CLUB 20, Action 22 and Progressive 15. A copy of the survey is also attached.

From: CLUB 20 [mailto:nicolle@club20.org]
Sent: Thursday, April 03, 2014 1:34 PM
To:
Subject: ALERT:Transportation Survey- Lend Your Voice!

****ALERT****

Transportation Survey-

Rural Advocacy Groups Look for Solutions

A good, strong transportation system is needed in Colorado and is essential to statewide economic prosperity. CLUB 20, Action 22 and Progressive 15 members recognize the challenges in maintaining state highways as funding sources decline.

The three organizations have been working with the Metro Mayors, CDOT and other statewide stakeholders to identify options for a state-wide funding approach that is sensible for Colorado in addressing the growing maintenance and capacity concerns related to the state highway system.

In an effort to collect information regarding this issue from members and rural communities, Action 22, CLUB 20, and Progressive 15, have joined forces to conduct a survey regarding transportation in each of their perspective regions. The survey can be found at the link below and will be open until midnight on April 15th. The groups are requesting that members share the survey with their networks to get a broad sense of how declining roads throughout Colorado can be better maintained.

The transportation funding formula is also under consideration by the Transportation Commission and modifications may be enacted. The current distribution formula is based on vehicle miles traveled, lane miles and truck miles. New formula considerations include a potential reduction in vehicle miles traveled and lane miles in favor of a population based component, negatively impacting funding in rural Colorado. As rural Colorado has the greatest number of lane miles, those roads could fall into further disrepair. State highways are Colorado assets and, as such, Colorado has an obligation to maintain them throughout the state. State highway funding has been declining in Colorado for a number of years, resulting in 52% of the state's highways declining to "poor" condition. Modifications to the state funding formula will further jeopardize rural roads and economies.

The link to the survey is:

<https://www.surveymonkey.com/s/ruraltransportation>

Action 22, Club 20 and Pro 15 Transportation Survey

There is discussion going on at a state level on how transportation funding will be allocated throughout the state. It is currently distributed based on a formula of 45% Vehicle Miles Traveled, 40% Lane Miles and 15% truck miles. The new formulas under discussion all include using Population as a funding mechanism which could reduce funding in rural / less populated areas. We want to make sure we are advocating for your best interests and would appreciate your answers to the questions below. Please take the survey and have it back by midnight on April 15, 2014.

As we continue to advocate for funding for out state areas in transportation there are times when we might need stories and examples and possibly testimony. If you would be willing to be help, please e mail us

If you would like to share information with us that is not in the survey and that pertains to transportation, please E mail one of us. Action 22, Cathy Garcia Southeast Colorado and San Luis Valley cathy@action22.org

Club 20. Bonnie Peterson Western Slope bonnie@club20.org

Pro 15, Cathy Shull Northeast Colorado cathy@progressive15.org

1. How would you rate the roads in your county?

- Poor
- Fair
- Good
- Very Good
- Exceptional

2. How would you rate the roads you travel in other parts of Colorado?

- Poor
- Fair
- OK
- Good
- Excellent

3. Were you aware that state gas tax has not been increased since 1992 and the Federal Gas Tax has not been increased since 1993?

- Yes
- No

4. Were you aware that the budget for Colorado Department of Transportation's budget has decreased by \$500 million since 2008?

- Yes
- No

5. Please rate how important you believe transportation is to the following parts of our economy.

	Not Important	Somewhat Important	Important	Very Important	Extremely Important
Agriculture	<input type="radio"/>				
Energy	<input type="radio"/>				
Education	<input type="radio"/>				
Health Care	<input type="radio"/>				
Economic Development	<input type="radio"/>				
Quality of Life (entertainment, shopping, recreation)	<input type="radio"/>				

6. Please rank the following on where you believe the priorities should be in state spending. One being the highest and six the lowest.

- Education
- Health Care
- Business / Jobs
- Transportation
- Environment
- Corrections / Prisons

7. Please rank the following in importance to you on how transportation dollars should be spent? 1 is the highest and a 7 is the lowest.

- Safety (shoulders, striping, turn lanes, etc)
- Maintenance and repair of roads
- New roads
- Transit (bus system)
- Walking Trails
- Safe Walk to School Programs
- Bike Lanes

8. Are you willing to pay more money for transportation to improve the state system? If your answer is no, skip the next question.

- Yes
- No
- Not Sure

9. If you are willing to pay more or are not sure, which one of these funding mechanisms would you be willing to consider? Mark all that apply.

- Sales Tax Increase
- Gas Tax Increase
- VMT Tax (vehicle miles traveled tax)
- Income Tax
- Other (please specify)

10. In a typical week, about how many miles do you drive?

- In a typical week, about how many miles do you drive? Less than 10
- 10 - 50 miles
- 50-100 miles
- More than 100 miles

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11. What county do you live in?

*

12. What is your occupation?