Taming TABOR by Working From Within

by Paul C. Rufien

Fears regarding TABOR have largely gone unrealized at the local level. Local governments' use of enterprises and voter-authorized exceptions allow continuing efficient fiscal management.

Few developments have caused greater trepidation or set in motion such prolonged scrutiny and analysis within Colorado governmental entities than the passage in 1992 of the "Taxpayer's Bill of Rights" ("TABOR").[1] TABOR added Article X, § 20, to the Colorado Constitution. The express intention of TABOR is to "reasonably restrain most the growth of government."[2] In addition to certain procedural requirements, such as election provisions, TABOR imposes spending and revenue limitations on local governments in Colorado.[3]

TABOR was the subject of exhaustive analysis and interpretation before its passage and has been the subject of legal commentary since becoming law.[4] Inordinate amounts of time, expense, and energy have been devoted by government lawyers, accountants, and administrators in an attempt to determine the meaning of various TABOR provisions. Concern over what were perceived to be dire and potentially crippling financial consequences have led local government officials and consultants to search for ways to continue effective fiscal management under TABOR. However, that search need not have led beyond the pages of TABOR itself.

The state of Colorado itself is constrained by the size of its budget; the litany of economic forces affecting various components of that budget; and the unwieldy nature of any potentially beneficial ballot issue, which would have to be passed via a statewide vote. Unlike the state, local governments are better able to avail themselves of mechanisms within TABOR to ease the potential impacts of its revenue and spending limitations.

Since 1993, the Colorado appellate courts have reviewed a steady stream of cases involving TABOR. Two issues have received particular attention from the courts: (1) "enterprises" under TABOR;[5] and (2) voter-authorized exemptions from TABOR.[6] Through evolution via judicial analyses, the treatment of these two issues has provided local governments with a means to function effectively within the confines of TABOR.

This article does not rehash previous analyses; the article is intended to be part of the continuing discussion of local government operations under TABOR. It examines TABOR "enterprises" and voter-authorized exemptions. Through these two issues, the blueprint for avoiding unnecessary financial limitations for local governments is unfolded.

Definition of "Enterprise" Under TABOR

"Enterprises" are expressly excluded from the election requirements and other limitations of TABOR, which apply to "districts." TABOR defines districts as "the state or any local government, *excluding enterprises*."[7] (*Emphasis added.*) Further, the TABOR definition of an enterprise is:

> a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.[8]

Under TABOR, an enterprise is not a separate legal entity. It is a function of accounting and a component of the government entity as a whole. In every respect, the enterprise remains a part of the government within which it operates. The board, council, or commissioners of the government entity remain the governing body of the enterprise. Governmental immunity as to operations of the enterprise, public records, and open meetings laws are applicable, and auditing of and budgeting for the enterprise occurs through the statutory mandates applicable to the government.

Resolution or Ordinance to Create an Enterprise

A government entity does not have to take any specific action to create an enterprise. Enterprise status, and the accompanying exclusion from the provisions of TABOR, is a *de facto* determination. Ultimately, the determination of enterprise status will be made by an examination of the facts applied over a one-year period.

Nonetheless, both legally and practically, it can be useful and is advisable for the governing body to adopt a resolution or ordinance creating an enterprise or multiple enterprises. Such a formal expression of the governing body's intent can be a persuasive underlying resource in the event of any challenge as to an enterprise's validity. Other benefits of such a resolution or ordinance are identified in the following discussion of the four-part test for defining an "enterprise."

Four-Part Enterprise Criteria Test

The TABOR definition of an enterprise[9] sets forth three separate criteria that must be satisfied. Under TABOR, an enterprise must be: (1) a government-owned business; (2) authorized to issue its own revenue bonds; and (3) receiving less than 10 percent of annual revenue in grants from all Colorado state and local governments combined.[10]

The Colorado Supreme Court further delineated whether an enterprise is a government-owned business in *Nicholl v. E-470 Public Highway Authority*.[11] According to *Nicholl*, it must be determined whether the enterprise is *both* "government-owned" and a "business," given the ordinary meaning and understanding of those terms.[12] Thus, TABOR itself and *Nicholl* combine to establish a four-part test to determine the validity of an enterprise:

1. Is the enterprise government owned?
2. Is the enterprise a business?
3. Does the enterprise have the authority to issue its own revenue bonds?
4. Does the enterprise receive less than 10 percent of its annual revenue in grants from all Colorado state and local governments combined?[13]

No appellate case law has devoted significant analysis to the four-part test regarding enterprises since *Nicholl*. However, a district court case in Archuleta County encompassed every aspect of the enterprise analysis. That case, *Alpine Cascade Corp. et al. v. Pagosa Area Water and Sanitation District*,[14] settled prior to trial, but after summary judgment was granted regarding three of the four parts of the enterprise test.[15] Although partial summary judgment at the district court level does not rise to the level of precedent in the state, the district court's treatment is a significant indicator as to how other courts may treat the same issues.

Part 1: Government-Owned

The first criterion of the four-part test is the requirement that the enterprise be government-owned.[16] When ownership and control of an enterprise's assets and operations are with the government, the enterprise is considered "government-owned."[17] By contrast, for an enterprise not to be government-owned, the forming entity would have to divest itself of either ownership or control of the enterprise's assets or operations. To do so would unnecessarily complicate the structure of the enterprise; more significant, it would be fatal to the validity of the enterprise.

Any government entity attempting to establish an enterprise likely will satisfy this part of the test. Nonetheless, to avoid doubt regarding the satisfaction of this criterion, it is recommended that an enterprise resolution or ordinance be drafted. This should make clear, and perhaps explain for the record, the basis of the enterprise argument. By resolution or ordinance, the forming entity should expressly place ownership and control of the enterprise's assets and operations with the governing body of the entity itself.

Governance of the enterprise operations then should be exercised during meetings of the entity's governing body. There is no need to have the governing body attempt to distinguish between actions on behalf of the enterprise and those on behalf of the government on the whole. The governing body wears but one hat. Enterprise-related decisions come within the functions of and service to the government entity.

The *Alpine Cascade* district court case addressed the question of whether a "single-purpose special district" could be government-owned.[18] The *Alpine Cascade* plaintiffs maintained that because the district's water and wastewater services were combined into one all-encompassing enterprise, it could not be a valid enterprise under TABOR. The argument was that because such an all-encompassing enterprise performs all the operations of the government entity, it essentially becomes one with the government. The plaintiff reasoned that such an enterprise could not be government-owned because a government cannot own itself.

The defendant district countered by delineating the functional separation between a single-purpose district and its enterprise. Although one enterprise may perform all services of the district, there remain arrays of governmental functions that must be performed by the district as a government.

Included among the many non-enterprise functions of a single purpose district are collection of taxes, elections, general obligation debt service, board meetings, budgets, audits, investments, planning, certain administrative acts, inclusions and exclusions, statutory liens and foreclosures, litigation, eminent domain, notices and publications, certain contracts, adoption and amendment of rules and regulations, compelling connections to the public systems, and other constituent (taxpayer) matters.[19] Further, the district pointed out that governmental functions that remain separate from the "business-like" water activity functions may be funded from property taxes or other tax revenue, which are subject to TABOR limitations.[20]

The district court in *Alpine Cascade* granted the water and sanitation district summary judgment on the issue that the district's enterprise was government-owned. That ruling is supported by the language of a legislative enactment, entitled "Water Activity-Enterprise Status" ("Act").[21] The Act expressly states that a single purpose special district may establish an enterprise.[22] In addition, such an enterprise may conduct all aspects of water activities.[23] The Act imposes no limit on the number of water activities that may be performed by an enterprise.

The Act clarifies certain terms for the water activity provider. Governments that operate water activities must comply with

the terms of the Act, but are not solely reliant on it for validity as an enterprise. Enterprise status under TABOR remains a *de facto* determination regardless of the Act. If the Act were to be dramatically amended or repealed, an enterprise's validity under TABOR would not be affected. Local government functions beyond water activities are unaffected by the Act.

Part 2: Enterprise is a Business

The second criterion is that an enterprise must be a "business." The *Nicholl* court stated that the determination of whether an enterprise is a business must be made, given the ordinary meaning and understanding of the term.[24] "Business" is generally understood to mean an activity that is conducted in pursuit of benefit, gain, or livelihood.[25] The E-470 Authority provided a service in exchange for a user fee. Therefore, the *Nicholl* court found that it fit the definition of a business.[26] The service-for-fee concept is the foundation for the determination of whether an enterprise operates as a business.[27]

Prior to TABOR, many government operations were considered "enterprises" under governmental accounting standards where the intent of the governing body was to pay operational costs primarily through user fees.[28] Some examples of the many types of accounting enterprises include golf courses (supported primarily through greens fees), swimming pools (supported primarily through memberships or daily user fees), water and wastewater operations[29] (supported primarily through an array of fees and charges), and daycare programs (supported primarily through tuition fees). Due to their service-for-fee nature, those same operations remain "businesses" under TABOR considerations of an enterprise.

Noticeably absent from the analysis of an enterprise as a "business" is a requirement of self-sufficiency. Initially, the accounting standards applicable to governments require only the "*intent* to pay costs *primarily* through user fees."[30] (*Emphasis added.*) Implicit in that definition is the recognition that: (1) not all costs must be paid by fees; and (2) even a failure to primarily pay costs by fees does not defeat "business-like" status, as long as the *intent* is present.

Such an accounting-based analysis is consistent with judicial treatment as well. Regarding the term "business," it "may or may not have the objective of direct financial profit."[31] Many private businesses are not-for-profit, subsidized, or otherwise not self-supporting. TABOR itself acknowledges that enterprises need not be self-supporting, and defines the level of subsidization that an enterprise may receive and remain valid. Under TABOR, enterprises may receive grants equaling up to 10 percent of annual revenues.[32]

In the *Alpine Cascade* case, the district court granted summary judgment on the issue of whether the single-purpose district's enterprise was a "business." In doing so, it rejected the plaintiff's argument that the enterprise business must be self-supporting. Again, a well-crafted resolution or ordinance should express the intent to pay costs of the enterprise operations primarily through fees charged based on the services provided.

That intent does not prevent an enterprise whose revenues exceed expenditures from giving money to the government side of the budget. TABOR has no limitation against such a flow of revenue. The private sector also supports that conclusion; many private businesses make civic contributions, and that does not affect their status as a business. Nonetheless, an enterprise should not increase fees for the sole purpose of creating a situation where a financial contribution to government functions would be possible. As set forth in *Nicholl*, user fees should be designed to pay the costs of the enterprise operations.[33]

Part 3: Authority to Issue Revenue Bonds

The TABOR definition of "enterprise" requires that an enterprise be "authorized to issue its own revenue bonds."[34] A resolution or ordinance is an easy means by which to clarify an enterprise's authority to issue revenue bonds. The government owner of the enterprise will have revenue-bonding authority. The enterprise, as a part of the government whole, carries the same authority. The resolution or ordinance should state that the enterprise might commit its fee-based revenue to satisfy debt service from revenue bonds.

To avoid any question or dispute, revenue bonds attributable to the enterprise operations should be issued by the legal government entity, operating by and through its enterprise. Although this is not a legal requirement, it would avoid the question as to the source of revenue pledged to the bonds. Further, it provides a good source of the entity's intent as presented to the highly scrutinized arena of public finance.

Part 4: Percentage of Government Grants

Of all the *de facto* determinations that make up the evaluation of the validity of an enterprise, the most fact-intensive is whether an enterprise receives less than 10 percent of annual revenue in grants from all Colorado state and local governments combined. Because of the fact-intensive nature of this criterion, it is the most difficult to evaluate and involves the most ongoing administration. Several elements are continually at work.

In determining whether an enterprise satisfies the 10 percent grant criteria, it first must be determined what period of time should be examined. TABOR itself provides the first step of this determination. Under TABOR, an enterprise must receive less than "10 percent of [its] *annual* revenue in grants from . . . Colorado state and local governments. . . ."[35] (*Emphasis added.*) Further, TABOR expressly contemplates that an enterprise may move in and out of qualification under TABOR.

Reading the provisions of TABOR in concert, the determination of qualification of an enterprise must necessarily be on an annual basis. An enterprise's qualification under TABOR changes yearly. Thus, the previous year's determination is not determinative of the current year's qualification. Likewise, the current year's determination is not determinative of future years.

Each year must be examined at the given moment in time that the challenge is made or an opinion as to validity is required. There are many examples of why a current year determination must be made, such as:

1. A first-year enterprise has no prior year from which to gather data. Unless a current year evaluation is made, no first-year enterprise could ever be valid.
2. There are many situations where a governing body may knowingly disqualify its enterprise for a given year. Particularly in the case of major infrastructure-related projects, financial feasibility may be possible only through acceptance of large grants. Such income may drastically increase revenue and exceed the 10 percent grant criteria. For the year in which the grant is received, there could be no enterprise. However, that does not restrict the enterprise from qualifying again the following year.
3. Similarly, the receipt of general obligation bond proceeds may disqualify the enterprise for that year, due to the one-time infusion of a large sum into the entity's annual budget.
4. Inconsistent fee revenue alters an enterprise's qualification from year to year. The present validity of an enterprise depends on current-year fee revenue.

Relying on current-year information does not deprive any challenger of a full right of review. Potential challengers simply must choose the method of challenge and the remedy sought. If a prospective challenge is brought,[36] the validity of the enterprise will be determined based on the best available data. These data will include budget projections, partial-year comparisons and audits, and covenants made by the governing body. If the challenger is not satisfied with that degree of review, it may elect to wait and seek retroactive review. If actual year-end calculations show that the enterprise received more than 10 percent in impermissible grants, the revenues of the invalid enterprise are not excluded from TABOR limitations. Accordingly, the government will be in a situation where a refund is likely in order.[37]

A possible challenge relating to the issuance of revenue bonds places the governing body in a position of risk analysis. The potential refund of a multi-million dollar bond issuance could have devastating effects. In analyzing the potential risk involved, it is reasonable for the governing body to examine its past years' enterprise compliance.

A history of enterprise validity can ease the risk involved. On the other hand, a history of inconsistent validity should raise questions and call for close scrutiny regarding current-year operations and projections. That scrutiny is important in achieving confidence that the enterprise will be valid. The relevance of prior years' validity, however, is not determinative of current-year validity. It is entirely possible that an enterprise would not qualify for all prior years, but because of changed circumstances, qualify in the current year.

There is considerable uncertainty as to what constitutes a "grant." Nevertheless, two sources of funds that are not grants under TABOR are: (1) federal funds, regardless of the use of the word "grant" in the funding application or award; and (2) private donations, which are distinguishable as "gifts."

For water and sanitation districts, the Act uses the 10 percent grants criteria in almost identical language as TABOR.[38] Further, the Act defines "grants" to mean cash payments by a state or local government.[39] Read literally, the Act's definition would exclude all contributions to an enterprise of equipment, services, or any other non-cash subsidy. If such a literal interpretation were applied to TABOR, there would be no substance left to the 10 percent grant criteria. If an enterprise ever needed more than 10 percent annual revenue to meet operational needs, the shortfall could be converted away from cash into equipment, services, or other in-kind contributions. Such a result does not afford full meaning to the TABOR criteria. Contributions of equipment, provision of services (such as administration), and similar in-kind contributions all should be regarded as "grants" if given by a state or local government.

The provision of personnel services presents a unique administrative dilemma. As a "business," the enterprise should pay the personnel required for its operations. The dilemma arises when administrative personnel (and related costs of supplies) are shared by the government and its enterprise. It can be extremely difficult to determine which personnel or administrative costs are attributable to the enterprise and which are attributable to the governmental function. The solution is that such administrative costs should be accounted for between the government and the enterprise based on the reality of the division between the functions. Such determination should be left to the reasonable discretion of the governing body. An appropriate allocation of revenues and expenses should be prepared during the government's annual budget process.

The adoption of budgeting items is legislative in nature.[40] The legislative decision allocating revenues and expenses between the government and the enterprise is entitled to a presumption of validity.[41] Except under extraordinary circumstances, courts hesitate to interfere with legislative actions of government bodies unless there is evidence of fraud or abuse of discretion.[42]

There is no precise guideline as to what the proper allocation should be between the government and the enterprise. As long as the governing body exercises reasonable efforts to make the proper allocation, neither challengers nor the courts should micromanage the budgetary decisions.[43]

Voter Authorized Exceptions ("De-Brucing")

Voter-authorized exceptions from TABOR (euphemistically known as "de-

Brucing")[44] are becoming increasingly popular. Such voter-approved measures have been upheld by the courts in the *Acosta*, *Havens I*, and *Havens II* cases.[45] Unlike the cases involving enterprises, which required extensive judicial interpretation as to the meaning of various terminology of TABOR, the cases involving voter-approved measures were decided largely on the basis of the "plain meaning" of TABOR.[46]

The courts have determined that the plain meaning of TABOR gives great latitude to the will of the voters in the intent of the question adopted. According to the Colorado Supreme Court, voters should be the ultimate authority on matters of taxation and should be trusted to exercise sound judgment.[47]

In the *Acosta* case,[48] the validity of a voter-approved exception to TABOR was challenged because the City of Aurora ballot issue did not contain language identifying a specific dollar amount as required by the Colorado Constitution.[49] The Colorado Supreme Court found that the requirement of specific dollar amounts was inapplicable to the voter-approved exclusion of the spending limitation. The Court found that subsection 20(3)(c) of TABOR sets forth the requirement of the de-Brucing ballot issue. Subsection 20(3)(c) does not contain the same requirement of "dollar amounts" as subsection 20(7)(d) and, therefore, no such requirement was read into TABOR. The Court stated,

> If [TABOR] had been intended to require that all revenue changes be presented to the voters for approval in terms of dollar amounts, it could have been drafted to state precisely that.[50]

The *Havens II* decision[51] applied the *Acosta* rationale to the critical issue of the effective duration of voter-authorized exceptions to TABOR limitations. In *Havens II*, a taxpayer challenged the validity of two separate ballot issues presented by Archuleta County and the Upper San Juan Hospital District. Both ballot issues were similar in their wording; they authorized a perpetual exception to the TABOR limits. The challenge asserted that subsection 20(3)(a) of TABOR imposed a maximum four-year duration to any voter-authorized exception.

In a succinct opinion in *Havens II*, the Court of Appeals affirmed the summary judgment rulings of the district court, holding that

> the language of [Colo. Const. Art. X, §] 20(3)(a) allowing voters to "approve a delay of up to four years in voting on ballot issues" does not mean that the voters' waiver of revenue and spending limits must be limited in duration to four years.[52]

Subsections 20(7)(b), (c), and (d) of the Colorado Constitution control the voter-approved exceptions to limitations of TABOR. Subsections 20(7)(b) and (c) address the annual change permitted under TABOR for revenue and spending respectively; and each specifically allows for adjustments "approved by voters." Subsection 20(7)(d) allows a local government to retain amounts that exceed the TABOR limits if "voters approve a revenue change as an offset." Restrictions on the duration of the adjustment or offset that may be authorized by the voters are not set forth in subsections 20(7)(b), (c), or (d).

The ultimate rationale of the *Havens II* court was based on the plain meaning of the TABOR provisions. Subsections 20(7)(b), (c), and (d) provide for the possibility of a voter-approved exception to the TABOR revenue and spending limitations. Without an express restriction as to duration, the language of the ballot issue controls. If the measure is perpetual in nature, the voter approval will be perpetual. In *Havens II*, the argued provision of subsection 20(3)(a) allows for a "delay" in voting on ballot issues, which is separate from the issues of subsections 20(7)(b), (c), and (d).

The courts have made it clear that a well-crafted ballot issue will be upheld and enforced by its terms.[53] As such, if voter approval is attained, a local government may except itself from the revenue and spending limitations of TABOR by whatever terms it deems appropriate. Any limitations on that exception will be the product of the ballot issue, either due to practical or political reasons. There is no need for legal limitation on the exception.

Voters have routinely approved exceptions to TABOR. The high rate of passage of such de-Brucing measures indicates that when voters are presented with identifiable needs of the government, they have approved of the benefits to a local government's ability to manage its funds. Although exceptions to a generalized rule exist, failures of de-Brucing measures largely have been attributable to poor communication with the voting public or the lack of an identifiable need to exceed the limitations otherwise imposed by TABOR.

If a ballot question is properly drafted, voter-approved exceptions exempt all revenue, encompassing both governmental and enterprise revenue, from TABOR limitations. However, even entities that have attained such exceptions should consider maintaining the procedures and accounting methods to administer an ongoing enterprise. Among other purposes, maintenance of an enterprise for budget and audit records provides valuable support as to the activities of the entity regarding the issuance of revenue debt without elections, where the service-for-fee nature of the operation becomes critical.

Conclusion

On the local government level, the fears of unrecoverable losses in revenue and paralysis of services have not been realized since the passage of TABOR in 1992. Although the potential for such dire consequences could have existed within the sometimes cryptically drafted provisions of TABOR, that has not proven to be the case. Instead, the antidote to those potential consequences can be found within the provisions of TABOR itself. TABOR provides two viable means for local governments to continue to collect and spend available funds so as to most effectively provide services.

First, "enterprises," by definition, are excluded from TABOR's provisions and limitations. Most government entities have one or more functions that are sufficiently "business-like" and will satisfy the four-part test of enterprise qualification. If so, those operations and their revenues are immune from TABOR constraints.

Second, and even more encompassing in duration and scope, is the potential for voter-authorized exceptions from the TABOR limitations. TABOR empowered the voters to enable the government entities to collect, retain, and spend funds unencumbered by the limitations that otherwise would apply without such voter approval. If a ballot issue is passed, the only applicable limitations of TABOR are those self-imposed limitations either expressly stated or not addressed due to omission from the ballot issue itself.

Administration of a broadly powered enterprise or obtaining the approval of the voters for all-encompassing and perpetual exceptions from the TABOR revenue and spending limitations is not a circumvention of TABOR. Similarly, such actions do not render TABOR a nullity. Enterprises and voter-authorized exceptions are permissible means by which a local government entity may effectively exercise an appropriate level of flexibility and discretion in its fiscal operations. Significant provisions of TABOR remain unaffected by either enterprise status or de-Brucing measures. Most

notable are the absolute restriction against increasing mill levies without voter approval and the specific language required of tax increase and debt authorization ballot issues.

Working within TABOR has allowed for the continued reasonable operations of local government without being unduly burdened by overly restricted revenues and an inability to spend to provide consistent, high levels of service. The state continues to be hampered by the TABOR limiting provisions, but local governments have continued and should continue to operate effectively in the otherwise murky waters of TABOR.

NOTES

1. Colo. Const. Art. X, § 20.
2. *Id.* at 20(1).
3. *Id.*
4. For other TABOR articles, *see* Wisor, "Amendment One: Government by Plebiscite," 22 *The Colorado Lawyer* 293 (Feb. 1993); Hobbs, "Water Activity Enterprises," 22 *The Colorado Lawyer* 2555 (Dec. 1993); Kennedy and Wisor, "Enterprises Under Article X, § 20 of the Colorado Constitution"—Part I, 27 *The Colorado Lawyer* 55 (April 1998); Part II, 27 *The Colorado Lawyer* 65 (May 1998).
5. *See Nicholl v. E-470 Public Highway Auth.*, 896 P.2d 859 (Colo. 1995); *Bd. of Cty. Comm'rs, Cty. of Eagle v. Fixed Base Operators, Inc.*, 939 P.2d 464 (Colo.App. 1997).
6. *See City of Aurora v. Acosta*, 892 P.2d 264 (Colo. 1995); *Havens v. Bd. of Cty. Comm'rs of Archuleta Cty. ("Havens I")*, 924 P.2d 517 (Colo. 1996).
7. Colo. Const. Art. X, § 20(2)(b).
8. *Id.* at 20(2)(d).
9. *Id.*
10. *Id.*
11. *Nicholl, supra*, note 5.
12. *Id.* at 867-68.
13. *Fixed Base Operators, Inc., supra*, note 5, focused on a county's ability and authority to create an enterprise. *Campbell et al. v. Orchard Mesa Irrigation Dist. et al.*, 972 P.2d 1037 (Colo. 1998) presented enterprise-related questions; the Court determined that a statutory irrigation district (formed under CRS §§ 37-42-101 *et seq.*) was not a "district" under TABOR and, therefore, consideration of the enterprise questions was unnecessary.
14. *Alpine Cascade*, Archuleta Cty. Dist. Ct. No. 97CV15 (1997).
15. *Id.*
16. Colo. Const. Art. X, § 20(2)(d); *Nicholl, supra*, note 5.
17. *Nicholl, supra*, note 5 at 868.
18. "Single-purpose special district" is used here to mean a district formed under CRS Title 32, which provides water, sanitation, or water and sanitation services. This discussion also is applicable to districts under CRS Titles 30 and 31.
19. CRS §§ 32-1-1001, 32-1-1006, 32-1-1401 *et seq.*, 32-1-501 *et seq.*, 32-1-602, 32-1-701 *et seq.*, 32-1-804, 32-1-902(2), 32-1-903, 32-1-1101 *et seq.*, 32-1-1201 *et seq.*, 32-1-1301 *et seq.*, 29-15-101 *et seq.*, 29-1-603, 29-1-104, 29-1-203, 24-75-601 *et seq.*, 24-75-702, and 24-10-115.
20. Hobbs, *supra*, note 4 at 2557.
21. *See* CRS §§ 37-45.1-101 *et seq.*
22. CRS §§ 37-45.1-102(1) and -102(4).
23. CRS § 37-45.1-103(2).
24. *Nicholl, supra*, note 5 at 867-68.
25. *Id.* at 868, *citing Lindner Packing & Provision Co. v. Indus. Comm'n*, 60 P.2d 924 (Colo. 1936).
26. *Nicholl, supra*, note 5 at 868-69. The Court ultimately found that the E-470 Authority was not an enterprise because it had the power to tax, which is an inherently governmental power.
27. *Id.*
28. Gov't Accounting Stds. Bd. § 1300.104(b)(1)(a).
29. *City of Northglenn v. City of Thornton*, 569 P.2d 319 (Colo. 1977); *Cty. of Larimer v. City of Fort Collins*, 189 P. 929 (Colo. 1920) (operation of water works system is proprietary or business function, not political or governmental). Although the governmental/proprietary distinction has been largely eliminated in Colorado, the analysis remains relevant to define "business" activities.
30. Gov't Accounting Stds. Bd. § 1300.104(b)(1)(a).
31. *Lindner Packing, supra*, note 25 at 927.
32. Colo. Const. Art. X, § 20(2)(d).
33. *Nicholl, supra*, note 5 at 868-69.
34. Colo. Const. Art. X, § 20(2)(d).
35. *Id.*
36. *E.g., Alpine Cascade, supra*, note 14.
37. Colo. Const. Art. X, § 20(1).
38. CRS § 37-45.1-102(4).
39. CRS § 37-45.1-102(2).
40. *Tisdale v. Bd. of Cty. Comm'rs*, 621 P.2d 1357 (Colo. 1980).
41. Hobbs, *supra*, note 4 at 2558, *citing Farnik v. Bd. of Cty. Comm'rs, Cty. of Weld*, 341 P.2d 467 (Colo. 1959).
42. *City of Louisville v. Dist. Ct.*, 543 P.2d 67 (Colo. 1975); *McCray v. City of Boulder*, 439 P.2d 350 (Colo. 1968).
43. Under CRS § 37-45.1-102(2), for water and sanitation districts, the Act allows a government entity to pay an enterprise for services provided by the enterprise; these payments would not constitute a "grant" as defined by the Act. By having "business" operations provided by the enterprise, the government derives a tangible benefit. It is logical that such a benefit could be quantified, and that amount paid to the enterprise as consideration to an implied contract rather than as a "grant." To ensure an enterprise complies with the 10 percent grant criteria, any local government should be cautious in relying on this type of payment for services concept. Compliance with the Act does not necessarily equate to compliance with TABOR.
44. The term "de-Brucing" refers to the author and primary proponent of TABOR, Douglas Bruce.
45. *Acosta, supra*, note 6; *Havens I, supra*, note 6; *Havens v. Bd. of Cty. Comm'rs, Cty. of Archuleta ("Havens II")*, 58 P.3d 1165 (Colo.App. 2002).
46. *Id. See also Bolt v. Arapahoe Cty. Sch. Dist. No. Six*, 898 P.2d 525, 532 (Colo. 1995); *Acosta, supra*, note 6 at 267.
47. *Havens I, supra*, note 6.
48. *Acosta, supra*, note 6.
49. This language is required by Colo. Const. Art. X, § 20(7)(d). The Aurora ballot issue read: "Shall Aurora's taxes be increased by $5,000,000 annually, commencing in 1994, for more police protection and more detention space, and by whatever additional amounts are raised annually thereafter, from a .25 percent Sales and Use Tax, to be spent as a voter-approved revenue change and an exception to the limits which would otherwise apply . . . ?"
50. *Acosta, supra*, note 6 at 269.
51. *Havens II, supra*, note 45.
52. *Id.* at 1167-68.
53. *Acosta, supra*, note 6; *Havens I, supra*, note 6; *Havens II, supra*, note 45. ■

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Enough said!