

Liz Peetz Colorado Association of REALTORS Testimony
HB21-1208 -- Finance Cmte 4/5/21

Good Afternoon members of the House Finance committee. I'm Liz Peetz and I'm here on behalf of the 27,000 REALTORS across the state of Colorado. **Today we are here in an OPPOSE position** for HB-1208. Because it is unconstitutional under TABOR.

We agree that it is very important to focus on funding the mitigation of wildfires that can damage property of homeowners and risk the lives of our firefighting professionals. In fact, we at CAR often work with various stakeholders in the housing industry, the Colorado State Forest Service and other like-minded organizations such as Firewise Colorado and many more all over the state to educate and inform property owners to pursue wildfire tax credits and mitigation work around their properties to create defensible space with Colorado Project Wildfire.

But this bill's structure is not sound and doesn't respect the Fire Commission process.

UNFORTUNATELY we cannot support HB-1208, because **it is unconstitutional under TABOR** and for that very reason this funding could be at risk of not being legally valid. We requested legal analysis about this enterprise and that analysis shows that the nexus fails the TABOR test in legal precedent and would be ripe for litigation and risk other enterprises too.

Again, we strongly support the concept of wildfire mitigation, but NOT the way this bill is structured in the funding source.

The summary of the main points and why this is not a valid enterprise is listed below:

Legal Analysis from Maven Law Group suggests:

- 1. HB 21-1208 would likely violate TABOR because it imposed a tax on insurers without obtaining voter approval.**
- 2. If the charge in HB 21-1208 is a fee, it appears that the revenue would have been subject to TABOR's state spending limits and revenue cap because the state fails to create an exempt enterprise.**

Summary points:

A Fee Must Have the Primary Purpose of Defraying the Direct and Indirect Costs of Providing a Service or Regulating an Activity.

The fee must "defray the cost of services provided *to those charged.*" To determine whether the primary purpose is to defray the cost of a service, a service must be identified. "Services" is not defined in statute or case law in relation to TABOR. The ordinary definition of "service" is "the *performance of work* commanded or paid for by another," an "action or use that furthers some end or purpose : conduct or performance that assists or benefits something : deeds useful or instrumental toward some object."

A grant, however, is a transfer of funds, not a service. As applied in TABOR, a grant is “any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid.” Grantmaking does not fit the definition of “service” as a performance of work, or an action, conduct, or deed. Where “services” is a defined term in other Colorado statutes, it includes specific government programs or activities provided under those programs, and does not include grantmaking.²⁴ In addition, Colorado statutes repeatedly use the phrase “grants and services,” which indicates that these are two separate functions.

HB 21-1208 Fails to Create an Enterprise Exempt from TABOR

The entity created in HB 21-1208 would be an enterprise if it was a government owned business. The state has both ownership and control of the entity and assets; therefore, it is clearly government-owned. The entity, however, is not a business because it does not generate revenue by collecting fees from service users.

Revenue is generated by collecting fees from insurers, but they are not service users. The services provided, if any, are to the general public and local governments. Although the activities may indirectly benefit the insurers who pay the fee, the government activities are in no sense business services provided to the insurers. Furthermore, the entity has the power to grant state funds to local governments, which is not consistent with the definition of a business. Therefore, the Hazard Mitigation Enterprise created by HB 21-1208 is likely not an enterprise, and the revenue collected would be subject to TABOR spending limits and revenue cap.

****If you would like to see the legal citations we would be happy to provide them on request.**

Testimony before the Colorado House of Representatives Committee
on Finance

House Bill 21-1208

Sarah Thorsteinson, ex-officio member of the Colorado Fire
Commission

Madame Chair and Committee members,

My name is Sarah Thorsteinson. I am a resident of Summit County and an ex-officio member of the Colorado Fire Commission representing property owners. I speak only on behalf of myself and not on behalf of the entire Fire Commission.

I oppose HB 1208, which creates a natural disaster mitigation enterprise funded by a new fee on insurance policies.

In 2019, the Colorado Legislature created and funded the Colorado Fire Commission to address many solutions to Colorado's wildfire prevention and suppression funding issues. The Commission, made up of experts from many related industries, has worked together tirelessly to find solutions for our state based on science and fact. I am very proud of this Commission's work, and their recommendations are addressed in SB-166, sponsored by Senator Rankin and Representative McCluskie, implementing recommendations of the Colorado Fire Commission. These recommendations include funding for mitigation. SB-166 requires that "at the end of any state fiscal year commencing with the 2022 state fiscal year, **section 6** requires the state treasurer to transfer any money in the aviation resources line of the annual general appropriation act for that same state fiscal year that would otherwise revert to the general fund into the wildfire preparedness fund (WPF). Money transferred by the state treasurer into the WPF must be used

for the purpose of traditional mitigation efforts. As long as money transferred into the WPF is being expended for one of the purposes specified in the bill, the division may allocate the money to any such purpose as will maximize the impact of such funding as the division may determine in its sole discretion.

The Fire Commission's recommendations do not include creating an enterprise to fund mitigation for natural disasters. If this is something you would like to consider, send it to the Commission for its research and review under its expertise first, before sending it through the Legislature.

As a Summit County resident, I know full well the positive impacts mitigation can make in wildfire prevention. We have seen it first-hand on several occasions, but most notably with the Buffalo Fire, where an area surrounding several condo complexes had been mitigated just weeks before the fire that encroached on this neighborhood. Homes were protected, and the fire's cost was significantly less than it would have been had the area not been mitigated. As Executive Director of Summit REALTORS®, we provide Summit County property owners grants to create defensible space and mitigation to help protect their properties against wildfire.

Mitigation must go hand in hand with fire suppression efforts to help battle Colorado's Wildfires, but this bill is not the mechanism to achieve these goals. Let the Colorado Fire Commission do its work.

Please oppose this bill and support SB-166.