



ALTERNATIVES TO THE PUBLIC FUNDING AND OPERATION OF COLORADO'S REST AREAS

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16. Abstract Due to budget challenges, Colorado is looking for alternative funding sources for the operation and maintenance of its interstate safety rest areas (SRAs). Federal Code 23 U.S.C. § 111 prohibits commercial " <i>establishments for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway . . . on the Interstate System</i> "... " <i>unless the establishment is owned by a state and existed in its location prior to January 1, 1960.</i> " Based on this law, the majority of SRAs in the U.S. have been developed to provide motorists with access to restrooms, picnic tables, and vending machines, but no other commercial services. In FY 2012, the cost of operating and maintaining twenty-seven rest areas in Colorado was just above \$3.5 million. In addition, planned and emergency projects in 2012 cost CDOT an additional \$251,233 for a total cost of approximately \$3.75 million in 2012. Although CDOT's cost of operating rest areas is lower than some states, the maintenance budget has not grown fast enough to finance their operation and maintenance. The closure of five SRAs in 2012 has been estimated to save the department \$300,000 annually. CDOT also closed two SRAs in 2009 for financial and other reasons. Implementation As CDOT continues to close rest areas due to tight budgets, it should look for alternatives to fund their operation and maintenance. These alternatives include small-scale strategies such selling tourism-related items or lottery tickets, and a large-scale strategy that includes developing a commercialized rest area outside of the interstate right of way through a public-private partnership. In addition, CDOT could advocate for changes to federal law.					
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Introduction

Due to budget challenges, Colorado is looking for alternative funding sources for the operation and maintenance of its interstate safety rest areas (SRAs). Currently in Colorado there are 25 SRAs operating year-round, and one SRA operating during the summer season only (Virginia Dale rest area). Of these 26 SRAs, twenty are located on the Interstate Highway System, five are located on the U.S. highway system, and one is located on a state highway (the Fruita Welcome Center on SH 340). The Bureau of Land Management maintains a rest area in Rangely, CO on SH 139. In FY 2012, the cost of operating and maintaining the twenty-seven rest areas was just above \$3.5 million. In addition, planned and emergency projects in 2012 cost CDOT an additional \$251,233 for a total cost of approximately \$3.75 million in 2012.¹

Although CDOT's cost of operating rest areas is lower than some states, for example in FY 2009 Virginia spent over \$16 million on maintaining 41 rest areas,² the CDOT maintenance budget has not grown fast enough to finance the operation and maintenance of the 27 remaining SRAs in Colorado. In 2012, CDOT closed five SRAs including the Hadley rest area on US 50, the Hugo Boyero Rest Area on US 287, the Gobblers Knob Rest Area on US 287, the Bennett Rest Area on I-70, and the West Glenwood Springs Rest Area. These closures have been estimated to save the department \$300,000 annually. In addition to these closures, in 2009 CDOT closed the two Larkspur Rest Areas on Interstate 25 for financial and other reasons.

¹ Email from Cindy Hancock, CDOT Plant Maintenance Business Process Expert, Nov. 12, 2012.

² Alternatives to the Public Funding and Operation of Virginia Safety Rest Areas and Welcome Centers, (January, 2011) p. vii http://www.virginiadot.org/projects/resources/POL_leg_studiesRest_Areas_Final_Report.pdf

Current Federal and State Laws that Impact Rest Area Privatization/Funds Generation

Federal Code **23 U.S.C. § III** prohibits commercial “*establishments for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway . . . on the Interstate System*”... “*unless the establishment is owned by a state and existed in its location prior to January 1, 1960.*” This statutory prohibition was intended to preserve the scenic beauty of the then-rural interstate system and to encourage commercial development off-line along these corridors. Based on this law, the majority of SRAs have been developed to provide motorists with access to restrooms, picnic tables, and vending machines, but no other commercial services.

However, in a few locations, commercial enterprises have been grandfathered in. For example, along a stretch of interstate highway in West Virginia that was previously a private highway, the SRAs have a West Virginia Made craft shop, fast food, coffee, ice cream, a convenience grocery, a 24-hour fuel station, automotive accessories, a truckers’ lounge, showers, a vending and game room, motor coach hospitality, and a Sun Room Eating Area. The operations of this travel plaza are leased to Host Marriott Services.³ The reasons that some rest areas are exempt from the commercialization prohibition are: (1) federal code exempts commercial establishments built before 1960 on federal-aid highways, and (2) roads that were built without federal aid, but “carry” interstate segments today are allowed to continue commercialized rest areas.⁴

Although **23 U.S.C. § III** generally prohibits commercial activities at SRAs, there are a few exceptions. These exceptions were clarified in 2012, with the passage of MAP-21.

³ West Virginia Parkways Authority. Beckley Travel Plaza. 2010.
<http://www.transportation.wv.gov/turnpike/Pages/BeckleyTravelPlaza.aspx>.

⁴ Alternatives to the Public Funding and operation of Virginia Safety Rest Areas and Welcome Centers, (January, 2011) p. 8 http://www.virginiadot.org/projects/resources/POL_leg_studiesRest_Areas_Final_Report.pdf

According to **23 U.S.C. § 111** commercial activities are permitted if:

- (1) the activities are available only to customers using the rest area and are limited to—*
- (2)(A) commercial advertising and media displays if such advertising and displays are—*
 - (i) exhibited solely within any facility constructed in the rest area; and*
 - (ii) not legible from the main traveled way;*
- (B) items designed to promote tourism in the State, limited to books, DVDs, and other media;*
- (C) tickets for events or attractions in the State of a historical or tourism-related nature;*
- (D) travel-related information, including maps, travel booklets, and hotel coupon booklets;*
- and*
- (E) lottery machines, provided that the priority afforded to blind vendors under subsection (c) applies to this subparagraph.*

*(3) **Private operators** - A State may permit a private party to operate such commercial activities.*

*(4) **Limitation on use of revenues.** - A State shall use any revenues received from the commercial activities in a rest area under this section to cover the costs of acquiring, constructing, operating, and maintaining rest areas in the State.*

*(c) **Vending Machines.** - Notwithstanding subsection (a), any State may permit the placement of vending machines in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in such State. Such vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, commonly known as the “Randolph-Sheppard Act”*

(20 U.S.C. 107a (a)(5)). The costs of installation, operation, and maintenance of vending machines shall not be eligible for Federal assistance under this title.

Colorado Law

Colorado law is virtually silent on the regulation of rest areas. The only statute currently in force is **CRS 43-1-403(7)**, which prohibits the display of advertising and informational plaques at rest areas that are visible from the travel way of the interstate system, federal-aid primary roads, and federal-aid secondary roads.

Strategies to Increase Nonpublic Funding of Colorado's Rest Areas

Due to budget shortfalls, CDOT is looking for alternative ways to fund and operate its 27 SRAs. Below are potential small- and large-scale changes that could be pursued within the existing legal framework and recommendations on legislation that could be pursued to allow additional commercialization.

Small-Scale Strategies

MAP-21's changes to **23 U.S.C. § III** slightly relaxed the prohibition on commercial activities within rest areas. Specifically, SRAs may host commercial advertising and media displays if such advertising and displays are exhibited solely within any facility constructed in the rest area; and not legible from the main travel way. In addition, rest areas may sell items designed to promote tourism in the State, however these items are limited to: (a.) books, DVDs, and other media (b.) tickets for events or attractions in the State of a historical or tourism-related nature (c.) travel-related information, including maps, travel booklets, and hotel coupon booklets; and (e.) lottery machines, provided that the priority afforded to blind vendors per **23 U.S.C. § III(c)**. In addition, a State may permit a private party to operate such commercial activities.

MAP-21 also clarified section **23 U.S.C. § III(C)** on vending machines. According to the new language vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. However the vending machines may only be operated by the State. In permitting the placement of vending machines the State shall give priority to vending machines which are operated by the blind. Although states have gained additional options to generate revenues under these changes to MAP-21, any

revenues generated are mandated to go towards the costs of acquiring, constructing, operating, and maintaining rest areas in the State.

Large-Scale Strategies

One possible large-scale strategy that may be permissible under current law is the commercial development of properties adjacent to (but outside the interstate right-of-way and therefore outside the purview of federal code restricting commercialization) SRAs. An example of this could be the development of public-private partnership rest areas offering commercial services on state owned/controlled land.⁵ For example, at locations where CDOT owned land adjacent to the highway, such as near interchanges, this property could be leased to a private entity that would develop and operate a commercialized rest area at this location. The private partner would be able to operate commercial services onsite, such as food/beverage, retail, fuel, and perhaps other appropriate traveler-related commercial services. CDOT would review and approve the private entity's facility design and services operations, ensuring the design and operations conformed to the Department's standards.

In this partnership model, the benefits to the private partner would include (a) not having to purchase costly freeway frontage property, (b) obtaining a designation and highway signage as a state-sanctioned partnership rest area, and (c) other incentives and financial benefits that the state might provide, such as a property tax exemption or favorable lease terms (perhaps low or no lease fees), and a long-term contract. However, the private partner would sacrifice long-term control of the land through ownership and would in most cases need to make some amount of financial contribution (development, operation, or maintenance), or make lease payments to the state. In this partnership model, CDOT would benefit by (a) not having to fund all of the design

⁵ Alternatives to the Public Funding and operation of Virginia Safety Rest Areas and Welcome Centers, (January, 2011) p. 39 http://www.virginiadot.org/projects/resources/POL_leg_studiesRest_Areas_Final_Report.pdf

and construction of an expensive traditional rest area, (b) save on annual rest area maintenance costs, and/or (c) receive income in the form of lease payments from the private partner.

Although other reports have advocated for state DOT development of commercialized travel plazas that have pedestrian access to SRAs,⁶ MAP-21 made this more difficult with the requirement that “*the State ... will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment.*”⁷ Thus, it would be much more challenging to accommodate a private service station with pedestrian access to an interstate SRA.

Potential Amendments to the Federal Code

In addition to the projects mentioned above, CDOT could advocate for changes to the Federal Code. For example:

- *23 U.S.C. §111* could be amended to allow interstate SRAs to charge for truck electrified parking. In 2005, *23 U.S.C. §111* was amended to allow interstate SRAs to charge for truck electrified parking, however this amendment was short lived as it was repealed in 2008 due to pressure from trade groups.⁸
- *23 U.S.C. §111* could be amended to allow for states to conduct pilot projects allowing for partial or full commercialization of SRAs. These pilot projects could then be evaluated to determine the financial impacts they have on private truck stops adjacent to the interstates.

⁶ Alternatives to the Public Funding and Operation of Virginia Safety Rest Areas and Welcome Centers, (January, 2011) p. xv http://www.virginiadot.org/projects/resources/POL_leg_studiesRest_Areas_Final_Report.pdf

⁷ *23 U.S.C. §111(a)*

⁸ Alternatives to the Public Funding and Operation of Virginia Safety Rest Areas and Welcome Centers, (January, 2011) p. 26 http://www.virginiadot.org/projects/resources/POL_leg_studiesRest_Areas_Final_Report.pdf

- *23 U.S.C. §1111* could be amended to allow complete commercialization of SRAs as advocated for by many entities including AASHTO.

Conclusions

As CDOT continues to close rest areas due to tight budgets, it should look for alternatives to fund the operation and maintenance. These alternatives include small-scale strategies such as selling tourism-related items or lottery tickets, and a large-scale strategy that includes developing a commercialized rest area outside of the interstate right of way through a public-private partnership. By utilizing these strategies, CDOT has the potential to generate additional funds for the operation and maintenance of SRAs. In addition, CDOT could advocate for changes to federal law. Of particular importance is the reinstatement of portion of the law that allowed for state DOTs to install truck electrified parking devices at SRAs, which have the potential to reduce truck idling and improve air quality.

Areas for Further Research

- Further discussion of current and future CDOT rest area maintenance budgets.
- Determination of whether Federal Interstate Highway Oasis Program has been repealed.
- Impact of small- and large-scale changes on CDOT maintenance workers.