2023 ELECTION MANUAL

ARTICLE 13.5
COLORADO LOCAL GOVERNMENT ELECTION CODE

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

Law reviews: For article, "The New Colorado Local Government Election Code: The Greatest Thing Since Sliced Bread", see 43 Colo. Law. 39 (Sept. 2014).

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PART 1
DEFINITIONS AND GENERAL PROVISIONS

1-13.5-101. Short title.

This article shall be known and may be cited as the "Colorado Local Government Election Code".

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 5, § 6, effective February 18.

1-13.5-102. Applicability of article - legislative intent.

(1) This article applies only to nonpartisan elections not coordinated by county clerk and recorders that are conducted by a local government; except that nothing prohibits the governing body of a local government from utilizing any requirements and procedures of the "Uniform Election Code of 1992", articles 1 to 13 of this title, in accordance with section 1-13.5-106.

(2) It is the general assembly's intent that the "Uniform Election Code of 1992" continue to govern coordinated elections.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 5, § 6, effective February 18.

1-13.5-103. Definitions.

As used in this article 13.5, unless the context otherwise requires:

(1) "Absentee voter" means an eligible elector who requests in writing that the designated election official mail a ballot to either the elector's deliverable mailing address or to another address designated by the elector for the purpose of voting by mail.

(1.5) "Affidavit" means a sworn statement in writing, including a self-affirmation.

(2) "Designated election official" means the person designated by the governing body of a local government or by court order to supervise election duties.

(3) "Electronic voting system" means a system in which an elector votes using a device by which votes are recorded electronically, including a touchscreen system.

(4) "Eligible elector" means a person who meets the specific requirements for voting at a specific election conducted under this article or for a specific candidate, ballot question, or ballot issue.

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(5) "Issue committee" has the meaning set forth in section 1-45-103.

(6) "Local government" means any district, business improvement district, special district created pursuant to title 32, C.R.S., authority, or political subdivision of the state, authorized by law to conduct an election. "Local government" does not include a county, school district, regional transportation district, or municipality as defined in section 31-1-101 (6), C.R.S.

(7) "Pollbook" means the list of eligible electors who are permitted to vote at a polling place or by mail ballot at an election conducted pursuant to this article.

(8) "Polling place" means a place established for holding elections conducted under this article.

(9) "Property owners list" means the list of property owner names and addresses prepared by the county assessor in accordance with section 1-13.5-204 or 1-13.5-1105 (2)(a) and (2)(b).

(10) "Registration list" means the list of registered electors of each local government, as prepared by the county clerk and recorder for the county in which the local government is located or as obtained through state registration records in accordance with section 1-13.5-203.

(11) "Special district" means any public entity, as defined in section 24-10-103, C.R.S., that is authorized by law to hold an election; except that the term does not include a county, a municipality as defined in section 31-1-101, C.R.S., or a school district as defined in section 22-30-103, C.R.S.

(12) "Voter" means an eligible elector who voted in the most recent election conducted pursuant to this article.

(13) "Voting machine" means any device fulfilling the requirements for voting machines set forth in part 4 of article 7 of this title regarding its use, construction, procurement, and trial.

(14) "Watcher" means a registered elector of the local government whose name is submitted to the designated election official and certified by the designated election official to the appropriate election judges pursuant to section 1-13.5-602.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 6, § 6, effective February 18. **L. 2016:** (1.5) added, (HB 16-1442), ch. 313, p. 1266, § 1, effective August 10. **L. 2021:** IP and (9) amended, (SB 21-160), ch. 133, p. 536, § 1, effective September 7.

1-13.5-104. Acts and elections conducted pursuant to provisions that refer to qualified electors.

Any elections, and any acts relating thereto, carried out under law that were conducted prior to July 1, 1987, pursuant to provisions that referred to a qualified elector rather than an eligible

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elector and that were valid when conducted are deemed and held to be legal and valid in all respects.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 7, § 6, effective February 18.

1-13.5-105. Acts legal and valid.

Acts and elections conducted pursuant to provisions that refer to registered electors, any elections, and any acts relating to those elections carried out under law that were conducted prior to July 1, 1992, and that were valid when conducted are held to be legal and valid in all respects.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 7, § 6, effective February 18.

1-13.5-106. Applicability of the "Uniform Election Code of 1992".

(1) Any local government may provide by resolution that it will utilize all or part of the requirements and procedures of the "Uniform Election Code of 1992", articles 1 to 13 of this title, in lieu of all or portions of this article with respect to any election. Absent such resolution, this article applies.

(2) All provisions of the "Uniform Election Code of 1992" not in conflict with this article 13.5 apply to local government elections; except that:

(a) Elections offenses and penalties described by parts 2 and 3 of article 13 of this title 1 do not apply to elections authorized under this article 13.5;

(b) Except as provided in subsection (2)(c) of this section, recall elections of local government officers must be conducted pursuant to part 5 of article 4 of title 31; and

(c) Recall elections of directors of special districts created pursuant to title 32 and directors of business improvement districts who were elected pursuant to section 31-25-1209 (1)(d) must be conducted pursuant to part 9 of article 1 of title 32.

(3) It is the intent of the general assembly that the general provisions of this article not supersede or supplant specific provisions of law.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 7, § 6, effective February 18; (2) amended, (SB 14-158), ch.170, p. 623, § 14, effective May 9. **L. 2016:** (2) amended, (SB 16-189), ch. 210, p. 754, § 5, effective June 6. **L. 2018:** (2) amended, (HB 18-1268), ch. 200, p. 1306, § 4, effective May 4.

Cross references: For the legislative declaration in SB 14-158, see section 1 of chapter 170, Session Laws of Colorado 2014.

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1-13.5-107. Computation of time.

(1) Calendar days shall be used in all computations of time made under this article.

(2) In computing time for any act or event to be done before any local government election, the first day is excluded, and the last, or election, day is included. Saturdays, Sundays, and legal holidays are included, but, if the time for any act to be done or the last day of any period is a Saturday, Sunday, or a legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 7, § 6, effective February 18. **L. 2021:** (2) amended, (SB 21-160), ch. 133, p. 536, § 2, effective September 7.

1-13.5-108. Powers of designated election official.

(1) Except as otherwise provided in this article, the designated election official shall render all interpretations and shall make all initial decisions as to controversies or other matters arising in the operation of this article.

(2) All powers and authority granted to the designated election official by this article may be exercised by a deputy designated election official in the absence of the designated election official or in the event the designated election official is unable to perform the duties.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 8, § 6, effective February 18.

1-13.5-109. Construction.

Substantial compliance with the provisions or intent of this article is all that is required for the proper conduct of an election to which this article applies.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 8, § 6, effective February 18.

1-13.5-110. Special elections.

Special elections must be held on such date as may be provided by law by the local government calling the special election.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 8, § 6, effective February 18.

1-13.5-111. Time for holding elections for special districts - type of election - manner of

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election - notice.

(1) Except as otherwise provided in subsection (4) of this section, regular special district elections must be held on the Tuesday succeeding the first Monday of May in every odd-numbered year.

(2) Special elections may be held only on the first Tuesday after the first Monday in February, May, October, or December of any year; except that ballot issue elections may be held only on the date of a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years. A ballot issue election that is not part of an organizational election must be conducted either as part of a coordinated election or in accordance with part 11 of this article.

(3) Any special district election ordered pursuant to article 1 of title 32, C.R.S., by the district court having jurisdiction over such existing or proposed special district must be held on the date ordered by the court and conducted in accordance with this article.

(4) Whenever the date of a regular special district election is identical to the date set for a municipal or another special district election in any municipality or other special district having boundaries coterminous with the special district, the election may be held jointly with the municipal or other special district election. An election held jointly pursuant to this subsection (4) is not a coordinated election.

(5) Any election for the organization of a new health assurance or health service district must be held on the date of the general election or on the first Tuesday in November of an odd-numbered year. Any election on the proposal of a health assurance or health service district must be conducted by the county clerk and recorder in which the proposed district will be located as part of a coordinated election in accordance with section 1-7-116.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 8, § 6, effective February 18. **L. 2018:** (1) amended, (HB 18-1039), ch. 29, p. 330, § 2, effective July 1, 2022.

1-13.5-112. Commencement of terms - nonpartisan officers.

(1) Unless otherwise provided by law, the regular term of office of a nonpartisan officer elected at a regular election commences the earlier of the following:

(a) No later than thirty days after the date that the election results are certified pursuant to section 1-13.5-1305 and upon the signing of an oath and posting of a bond, where required; or

(b) At the next meeting of the governing body of the local government following the date of the election.

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(2) Unless otherwise provided by law, if the election is canceled in whole or in part pursuant to section 1-13.5-513, the regular term of office of a nonpartisan officer commences at:

(a) The next meeting of the governing body following the date of the regular election, but no later than thirty days following the date of the regular election and upon the signing of an oath and posting of a bond, where required; or

(b) If the nonpartisan officer was elected at an election other than a regular election, the next meeting of the governing body of the local government following the date of the election.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 9, § 6, effective February 18. **L. 2016:** (1)(a) amended, (HB 16-1442), ch. 313, p. 1266, § 2, effective August 10.

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PART 2
QUALIFICATIONS AND REGISTRATION OF ELECTORS

1-13.5-201. Registration required.

Except where a statute specifically provides otherwise, no person is permitted to vote at any local government election without first having registered to vote in Colorado in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of this title.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 9, § 6, effective February 18.

1-13.5-202. Persons entitled to vote at special district elections.

No person is permitted to vote in any special district election unless that person is an eligible elector as defined in section 32-1-103 (5), C.R.S.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 9, § 6, effective February 18.

1-13.5-203. Registration records for local government elections - costs.

(1) No later than the fortieth day preceding the date of a scheduled local government election, the designated election official shall order the registration records from the county clerk and recorder. The designated election official shall order either:

(a) An initial list of the registered electors as of the thirtieth day prior to the election, with a supplemental list to be provided on the twentieth day; or

(b) A complete list of registered electors as of the sixth day prior to the election.

(2) The county clerk and recorder shall certify and make available to the designated election official a complete copy of the list of the registered electors of the local government that has territorial boundaries located within the county and is involved in the election. If a supplemental list is provided pursuant to paragraph (a) of subsection (1) of this section, the county clerk and recorder shall certify and make available to the designated election official the supplemental list of eligible electors who became eligible since the earlier list was certified. These lists substitute for the original registration record.

(3) The registration list that is certified thirty days before the election pursuant to paragraph (a) of subsection (1) of this section must contain the names and addresses of all registered electors residing within the local government at the close of business on the fortieth day

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preceding the election. The supplemental registration list for each local government that is certified no later than twenty days before the election must contain the names and addresses of all eligible electors residing within the local government at the close of business on the twenty-second day prior to the election. If a supplemental list is provided, it must contain the names and addresses of all eligible electors who became eligible during the period since the initial registration list was certified through the close of business on the twenty-second day preceding the election.

(4) Costs for the lists required to be obtained under this section must be assessed by the county clerk and recorder and paid by the local government holding the election. The fee for furnishing the lists shall be no less than twenty-five dollars for the entire list or no more than one cent for each name contained on the registration list, whichever is greater.

(5) The designated election official may cancel an order for the list if the election is canceled pursuant to section 1-13.5-513 and the county clerk and recorder has not already prepared the list.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 9, § 6, effective February 18.

1-13.5-204. Lists of property owners - costs.

(1) For elections where owning property in the local government is a requirement for voting in the election, no later than the fortieth day preceding the date of the election, the designated election official shall order the list of property owners from the county assessor. Except as otherwise required under subsection (2) of this section, the county assessor shall certify and deliver an initial list of all recorded owners of taxable real and personal property within the local government no later than thirty days before the election. The supplemental list for the local government shall be provided no later than twenty days before the election and shall contain the names and addresses of all recorded owners who became owners no later than twenty-two days prior to the election and after the initial list of property owners was provided. The county assessors shall assess the cost for the lists, which must be paid by the local government holding the election. The fee for furnishing the lists is no less than twenty-five dollars for both lists or no more than one cent for each name contained on the lists, whichever is greater.

(2) The designated election official of a local government may order the list described in subsection (1) of this section of all recorded owners of taxable real and personal property within the local government as of the thirtieth day before the election, with a supplemental list to be provided on the twentieth day before the election, or the designated election official may order a complete list as of the sixth day before the election.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 10, § 6, effective February 18.

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1-13.5-205. Delivery and custody of registration list and property owner list.

At such time as may be set by the designated election official, but at least one day prior to the election, one of the election judges from each precinct may appear in person at the office of the designated election official for the purpose of receiving the registration list and, as applicable, property owners list, election supplies, or the designated election official may deliver the same to one of the judges. The judges shall have custody of the registration list and property owners list and shall give his or her receipt for the list. After the closing of the polls on the day of election, the election judge selected pursuant to section 1-13.5-410 to deliver the election papers and supplies shall deliver the registration list and property owners list to the office of the designated election official or to such other place as the designated election official may designate as the counting center.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 11, § 6, effective February 18.

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PART 3
NOMINATIONS

1-13.5-301. Eligibility for office - prohibitions - exceptions - challenges.

(1) (a) No person except an eligible elector who is at least eighteen years of age, unless another age is required by law, is eligible to hold any office in this state. No person is eligible to be a candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of this state on or before the date the person is nominated to the office. The designated election official shall not certify the name of any candidate who fails to swear or affirm under oath that he or she fully meets the qualifications as of the date of nomination or who is unable to provide proof that he or she meets any requirements of the office relating to registration, residence, or property ownership.

(b) The information found on the person's voter registration record is admissible as prima facie evidence of compliance with the registration and residence requirements of this section. The information found in the property owners list is admissible as prima facie evidence of compliance with property ownership requirements.

(2) Except as otherwise provided in this subsection (2), no person is eligible to be a candidate for more than one office in the same local government at one time. This subsection (2) does not:

(a) Apply to memberships on different special district or business improvement district boards; or

(b) Prohibit a candidate or elected official of any political subdivision from being a candidate or member of the board of directors of any special district, business improvement district, or districts in which he or she is an eligible elector, unless otherwise prohibited by law.

(3) The qualification of any candidate may be challenged by an eligible elector of the local government within five days after the date that the designated election official certifies the candidate to the ballot. The challenge shall be made by verified petition setting forth the facts alleged concerning the qualification of the candidate and shall be filed in the district court in the county in which the local government is located. The hearing on the qualification of the candidate must be held not less than five nor more than ten days after the date the designated election official's statement is issued that certifies the candidate to the ballot. The court shall hear the testimony and other evidence and, within forty-eight hours after the close of the hearing, determine whether the candidate meets the qualifications for the office for which the candidate has declared. Part 1 of article 17 of title 13, C.R.S., regarding frivolous, groundless, or vexatious actions, applies to this section.

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Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 11, § 6, effective February 18.

1-13.5-302. Nomination of local government candidates.

(1) Except as provided in section 1-13.5-303 or other applicable law, candidates for office of nonpartisan local governments must be nominated, without regard to affiliation, by petition on forms supplied by the designated election official. A petition of nomination may consist of one or more sheets, but it must contain the name and address of only one candidate and indicate the office to which the candidate is seeking election. The candidate's name must be printed on each sheet of a petition of nomination.

(2) Nomination petitions for a candidate in a local government, other than a special district or business improvement district, may be circulated and signed, beginning on January 1 of the year in which election for that office is conducted and ending on the sixty-seventh day prior to the day of election, by at least two eligible electors residing within or eligible to vote in the local government.

(3) The circulator of each nomination petition shall make an affidavit that each signature thereon is the signature of the person whose name it purports to be and that each signer has stated to the circulator that the signer is an eligible elector of the local government for which the nomination is made.

(4) A petition is not valid if it does not contain the requisite number of signatures of eligible electors. The designated election official shall inspect timely filed petitions of nomination to ensure compliance with this section.

(5) Each nomination petition must be filed with the designated election official no later than the sixty-seventh day prior to the day of election. Every petition must have endorsed on it or appended to it the written affidavit of the candidate accepting the nomination and swearing that the candidate satisfies the requirements set forth in law to be a candidate and hold office in the local government.

(6) The designated election official shall preserve all nomination petitions filed with him or her for a period of two years. All such petitions are open to public inspection under proper regulation by the designated election official with whom they are filed.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 12, § 6, effective February 18.

1-13.5-303. Candidates for special district or business improvement district director - self-nomination and acceptance form.

(1) Except as otherwise provided in this section, no earlier than January 1 and no later than

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the normal close of business on the sixty-seventh day before the date of a regular special district election, any person who desires to be a candidate for the office of a special district director shall file a self-nomination and acceptance form or letter signed by the candidate and by an eligible elector of the state as a witness to the signature of the candidate.

(2) On the date of signing the self-nomination and acceptance form or letter, a candidate for director shall be an eligible elector of the special district. If the district is divided into director districts established pursuant to section 32-1-301 (2)(f), C.R.S., the candidate shall be an eligible elector within the boundaries of the director district in which the candidate is running for office.

(3) The self-nomination and acceptance form or letter must contain the name of the special district in which the election will be held, the county or counties where the special district is located, the special district director office sought by the candidate, the term of office sought if more than one length of a director's term is to be voted upon at the election, the date of the election, the full name of the candidate as it is to appear on the ballot, and whether the candidate is a member of an executive board of a unit owners' association, as defined in section 38-33.3-103, located within the boundaries of the special district for which the candidate is running for office. The candidate and witness must provide their respective residence addresses, including the street number and name, city or town, and county, and telephone numbers, and the candidate must provide a current e-mail address. Unless physically unable, all candidates and witnesses shall sign their own signature and shall print their names and include the date of signature on the self-nomination and acceptance form or letter.

(4) The self-nomination and acceptance form or letter must be filed with the designated election official or, if none has been designated, the presiding officer or the secretary of the board of directors of the special district in which the election will be held.

(5) (a) The self-nomination and acceptance form or letter must be verified and processed substantially as provided in this subsection (5)(a) and subsection (5)(b) of this section, a protest on such a form or letter must be determined substantially as provided in sections 1-4-909 and 1-4-911, and an insufficient form or letter may be cured by submitting an amended self-nomination and acceptance form or letter to the designated election official before the normal close of business on the sixty-seventh day before an election.

(b) Upon filing, the designated election official shall review the information in the self-nomination and acceptance form or letter and verify the information against the registration records, and, where applicable, the county assessor's records.

(c) If, while verifying a signer's information against the registration records in accordance with subsections (5)(a) and (5)(b) of this section, the designated election official finds that the signer provided his or her mailing address rather than his or her residence address as required under subsection (3) of this section, the designated election official may accept the self-nomination form if the designated election official is able to locate the signer's record in the

statewide voter registration database and determine that the self-nomination form is otherwise sufficient.

(d) After review, the designated election official shall provide notification of the sufficiency or insufficiency of the candidate.

(6) In a business improvement district with an elected board of directors, nominations for business improvement district directors must be handled substantially as provided in subsections (1) to (5) of this section.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 13, § 6, effective February 18. **L. 2016:** (5) amended, (HB 16-1442), ch. 313, p. 1266, § 3, effective August 10. **L. 2021:** (3) and (5) amended, (SB 21-160), ch. 133, p. 536, § 3, effective September 7.

1-13.5-304. Withdrawal from nomination.

Any person who has been nominated and who has accepted a nomination, or filed a self-nomination form or letter, may cause his or her name to be withdrawn from such nomination at any time before the election by executing a written affidavit withdrawing from the nomination. The withdrawing candidate shall sign the affidavit and file it with the designated election official.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 14, § 6, effective February 18.

1-13.5-305. Write-in candidate affidavit.

A write-in vote for any local government office is counted only if an affidavit of intent to be a write-in candidate is filed with the designated election official by the person whose name is written in not later than sixty-four days before the day of the election. The affidavit of intent must indicate that the signer desires the office and is qualified to assume the duties of that office if elected.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 14, § 6, effective February 18.

1-13.5-306. Objections to nominations.

All self-nomination and acceptance forms or letters, petitions of nomination, and affidavits of intent to be a write-in candidate that are in apparent conformity, as determined by the designated election official, with section 1-13.5-302, 1-13.5-303, or 1-13.5-305, are valid unless objection thereto is duly made in writing within three days after the filing of the same. In case an objection is made, the designated election official shall mail forthwith notice of the objection to any

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candidate for the same office. The designated election official shall decide objections within forty-eight hours after the same are filed, and any objections upheld may be remedied or defect cured upon the original petition, by an amendment thereto, or by filing a new self-nomination and acceptance form or letter, petition of nomination, or affidavit of intent, as applicable, within three days after the objection is upheld, but in no event later than the fifty-eighth day before the day of election. The designated election official shall pass upon the validity of all objections, whether of form or substance, and the designated election official's decisions upon matters of form are final. The designated election official's decisions upon matters of substance are open to review if prompt application is made, as provided in section 1-13.5-1501, but the remedy in all cases shall be summary, and the decision of the district court is final and not subject to review by any other court; except that the supreme court, in the exercise of its discretion, may review any proceeding in a summary way.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 14, § 6, effective February 18.

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PART 4
ELECTION JUDGES

1-13.5-401. Appointment of election judges.

(1) (a) Except as provided in subsection (2) of this section, at least fifteen days before each local government election, the governing body shall appoint the election judges.

(b) Each election judge must be registered to vote in Colorado and at least eighteen years of age. Election judges must be appointed pursuant to this article without regard to party affiliation. Neither a current candidate for director nor any immediate family member, to the second degree, of such candidate is eligible to serve as an election judge.

(c) The designated election official shall make and file in his or her office a list of all individuals so appointed, giving their names and addresses. The list is a public record and is subject to inspection and examination during office hours by any elector of the local government with the right to make copies thereof.

(2) The governing body may delegate to the designated election official the authority and responsibility to appoint election judges in the manner provided in this section.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 14, § 6, effective February 18. **L. 2016:** (1) amended, (HB 16-1442), ch. 313, p. 1267, § 4, effective August 10.

1-13.5-402. Number of judges - appointment.

The governing body, or the designated election official if authorized pursuant to section 1-13.5-401 (2), shall appoint at least two election judges for each local government election. The appointing authority may also appoint any additional judges as deemed necessary, and may appoint counting judges.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 15, § 6, effective February 18.

1-13.5-403. Certificates of appointment.

Promptly after the appointment of the election judges, the designated election official shall issue certificates certifying the appointments. The designated election official shall mail one certificate to each person appointed.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 15, § 6, effective February 18.

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1-13.5-404. Acceptance form - time to file.

With each certificate of appointment transmitted to the election judges, the designated election official shall enclose a form for acceptance of the appointment. Each individual appointed as an election judge may file his or her acceptance form in the office of the designated election official within seven days after the date that the designated election official mailed the certificate of appointment and the acceptance form. Unless otherwise determined by the designated election official, failure of any person appointed as an election judge to file an acceptance within those seven days results in a vacancy, which shall be filled in the same way the original appointment was made.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 15, § 6, effective February 18.

1-13.5-405. Vacancies - emergency appointments.

Except when section 1-13.5-404 applies, if an individual appointed as an election judge refuses or fails to accept the appointment or is unable to serve, the individual or any other election judge must immediately notify the designated election official. The designated election official shall forthwith appoint another qualified individual to serve as election judge in the place of the individual. In the event of an emergency, including inability to notify the designated election official, the remaining election judges at the location where the individual was to serve may appoint a replacement election judge.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 15, § 6, effective February 18.

1-13.5-406. Removal of judges.

The designated election official may summarily remove any election judge who neglects his or her duty, or commits, encourages, or connives at any fraud in connection therewith, or violates any election laws, or knowingly permits others to do so, or has been convicted of any felony, or violates his or her oath, or commits any act that interferes or tends to interfere with a fair and honest election. An election judge has no cause of action against a local government or designated election official arising from removal from office pursuant to this section.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 15, § 6, effective February 18.

1-13.5-407. Oath of judges.

Before any votes are taken at any local government election, the election judges shall make a

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self-affirmation substantially in the following form:

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I, ...., do solemnly swear (or affirm) that I am a citizen of the United States and
the state of Colorado; that I am a registered elector in Colorado; that I will perform
the duties of election judge according to law and the best of my ability; that I will
studiously endeavor to prevent fraud, deceit, and abuse in conducting the same; that I
will not try to ascertain how any elector voted, nor will I disclose how any elector
voted if, in the discharge of my duties as judge, such knowledge shall come to me,
unless called upon to disclose the same before some court; and that I will not
disclose the result of the votes until the polls have closed.
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Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 16, § 6, effective February 18.

1-13.5-408. Training of judges.

The designated election official shall make available an instruction class concerning the tasks of an election judge not more than forty-five days prior to each election. A designated election official shall remove an election judge who fails or refuses to attend the instruction class.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 16, § 6, effective February 18.

1-13.5-409. Compensation of judges.

The election judges at any local government election shall receive reasonable compensation for their services as election judges on election day and additional reasonable compensation for attending an instruction class required in section 1-13.5-408, as determined by the governing body of the local government or designated election official if authorized by the governing body to make a reasonable determination.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 16, § 6, effective February 18.

1-13.5-410. Compensation for delivery of election returns and other election papers.

The election judges in each polling place shall select one of their number to deliver the election returns, registration list, property owners list, ballot boxes, if any, and other election papers and supplies to the office of the designated election official or to such other place as the designated election official may designate as the counting center. The judge so selected shall be paid a reasonable amount of compensation for the performance of such service.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 16, § 6, effective February 18.

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PART 5
NOTICE AND PREPARATION FOR ELECTIONS

1-13.5-501. Call for nominations - definitions.

(1) Between seventy-five and one hundred days before a regular local government election, the designated election official shall provide public notice of a call for nominations for the election. The call must state the director offices to be voted upon at the election, where a self-nomination and acceptance form or letter may be obtained, the deadline for submitting the self-nomination and acceptance form or letter to the designated election official, and information on obtaining an absentee ballot.

(1.5) Except as otherwise required by subsection (1.7) of this section, the public notice required by subsection (1) of this section must be made by publication as defined by subsection (2) of this section and by any one of the following means:

(a) Mailing the notice, at the lowest cost option, to each address at which one or more active registered electors of the local government resides as specified in the registration list provided by the county clerk and recorder as of the date that is one hundred fifty days prior to the date of the regular local government election;

(b) Including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, voter information card or other notice of election, or other informational mailing sent by the local government to the eligible electors of the local government;

(c) Posting the information on the official website of the local government; or

(d) For a local government with fewer than one thousand eligible electors that is wholly located within a county the population of which is less than thirty thousand people, posting the notice in at least three public places within the territorial boundaries of the local government and, in addition, posting a notice in the office of the clerk and recorder of the county in which the local government is located. Any such notices must remain posted until the day after the call for nominations closes.

(1.7) (a) In the case of any metropolitan district that was organized after January 1, 2000, in accordance with title 32, the notice required by subsection (1) of this section must be made by e-mailing the notice to each active registered elector of the metropolitan district as specified in the registration list provided by the county clerk and recorder as of the date that is one hundred fifty days prior to the date of the regular local government election. Where the active registered elector does not have an e-mail address on file for such purpose with the county clerk and recorder as of the date that is not later than one hundred fifty days prior to the date of the regular local government election, the public notice required by subsection (1) of this section must be

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made by mailing the notice, at the lowest cost option, to each address at which one or more active registered electors of the metropolitan district resides as specified in the registration list provided by the county clerk and recorder as of the date that is one hundred fifty days prior to the date of the regular local government election.

(b) In addition to the public notice required by subsection (1.7)(a) of this section, the designated election official shall also provide public notice by any one of the following means:

(I) Publication as defined in subsection (2) of this section;

(II) Including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, voter information card or other notice of election, or other informational mailing sent by the metropolitan district to the eligible electors of the metropolitan district;

(III) Posting the information on the official website of the metropolitan district; or

(IV) For a metropolitan district with fewer than one thousand eligible electors that is wholly located within a county, the population of which is less than thirty thousand people, posting the notice in at least three public places within the territorial boundaries of the metropolitan district and, in addition, posting a notice in the office of the clerk and recorder of the county in which the special district is located. Any such notices must remain posted until the day after the call for nominations closes.

(2) As used in this section, "publication" means printing one time, in one newspaper of general circulation in the special district or proposed special district if there is such a newspaper, and, if not, then in a newspaper in the county in which the special district or proposed special district is located. For a special district with territory within more than one county, if publication cannot be made in one newspaper of general circulation in the special district, then one publication is required in a newspaper in each county in which the special district is located and in which the special district also has fifty or more eligible electors.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 16, § 6, effective February 18. **L. 2021:** (1) amended and (1.5) and (1.7) added, (SB 21-262), ch. 368, p. 2425, § 1, effective September 7.

1-13.5-502. Notice of election.

(1) The designated election official, at least twenty days before each local government election, shall give written notice of the election stating the date of the election and the location and hours during which the polls will be open; the date ballots have or may be mailed if the election is conducted by mail ballot; mail ballot drop-off locations; names of the officers to be elected and any ballot issues and ballot questions to be voted upon; and the names of those candidates whose nominations have been certified to the designated election official, which

listing must be as nearly as possible in the form in which such nominations will appear upon the official ballot. For an independent mail ballot election, the notice does not need to include the text of the ballot issues or ballot questions. A copy of the notice must be posted until after the election in a conspicuous place in the office of the designated election official. A copy of the notice must be mailed or sent via electronic mail to the county clerk and recorder.

(2) (a) In addition, the notice required by this section must be published in at least one newspaper having general circulation in the local government on or before the twentieth day before election day.

(b) On or before the twentieth day before the election, a special district must effect publication of the notice as provided in section 1-13.5-1102.

(3) All polling places must be designated by a sign conspicuously posted at least twenty days before each local government election. The sign must be substantially in the following form: "Polling Place for (name of local government)". In addition, the sign must state the date of the next election and the hours the polling place will be open.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 17, § 6, effective February 18.

1-13.5-503. Ballot issue notice.

(1) Any ballot issue notice relating to a local government ballot issue must be prepared and distributed in a manner consistent with part 9 of article 7 of this title.

(2) In addition to the requirements set forth in subsection (1) of this section, a local government submitting a ballot issue concerning the creation of any debt or other financial obligation at an election in the local government must post notice in accordance with the requirements of section 1-7-908.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 17, § 6, effective February 18.

1-13.5-504. Establishing precincts and polling places - applicability.

(1) This section applies to local government elections that are conducted by polling place.

(2) The governing body of each local government, or designated election official if authorized by the governing body, shall divide the local government into as many election precincts for local government elections as it deems expedient for the convenience of the electors of the local government and shall designate the location and address for each polling place at which elections are to be held.

(3) The designated election officials of local governments with overlapping boundaries that

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hold elections the same day by polling place must meet, confer, and thereafter, if practical, hold such elections in a manner that permits an elector in the overlapping area to vote in all of such elections at one polling place.

(4) Notwithstanding subsection (3) of this section, the governing body or designated election official shall change any polling place upon petition of a majority of the registered electors residing within the local government.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 18, § 6, effective February 18.

1-13.5-504.5. Accessibility of polling places to persons with disabilities.

(1) Each polling place shall comply fully with the current "ADA standards for accessible design" set forth in 28 CFR 36 and promulgated in accordance with the federal "Americans with Disabilities Act of 1990", as amended, 42 U.S.C. sec. 12101 et seq., and no barrier shall impede the path of electors with disabilities to the voting booth.

(2) Emergency polling places are exempt from compliance with this section.

(3) Except as otherwise provided in subsection (2) of this section, a designated election official shall only select as polling places such sites that meet the standards of accessibility set forth in subsection (1) of this section.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 18, § 6, effective February 18.

1-13.5-505. Judges may change polling places.

(1) When it becomes impossible or inconvenient to hold an election at the place designated, the election judges, after notifying the designated election official and after having assembled at or as near as practicable to such place and before receiving any vote, may move to the nearest convenient place for holding the election and at such newly designated place proceed with the election.

(2) Upon moving to a new polling place, the judges shall prominently display a proclamation of the change and may station a proper person at the original polling place to notify all persons appearing at the original polling place of the new location for holding the election.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 18, § 6, effective February 18.

1-13.5-506. Number of voting booths, voting machines, or voting systems.

(1) In local governments that use paper ballots, the governing body shall provide in each

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polling place a sufficient number of voting booths. Each voting booth shall be situated so as to permit an eligible elector to prepare his or her ballot screened from observation and shall be furnished with such supplies and conveniences as will enable the eligible elector to prepare his or her ballot for voting.

(2) In local governments that use voting machines, the governing body shall supply each polling place with a sufficient number of voting machines.

(3) In local governments that use an electronic voting system, the governing body shall provide adequate materials and equipment for the orderly conduct of voting.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 19, § 6, effective February 18.

1-13.5-507. Arrangement of voting machines or voting booths and ballot boxes.

The voting machines or the voting booths and ballot box must be situated in the polling place in plain view of the election officials and watchers. No person other than the election officials and those admitted for the purpose of voting are permitted within the immediate voting area, which is the area within six feet of the voting machines or the voting booths and ballot box, except by authority of the election judges, and then only when necessary to keep order and enforce the law.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 19, § 6, effective February 18.

1-13.5-508. Election expenses to be paid by local government.

The cost of conducting a local government election, including the cost of printing and supplies, is to be paid by the local government for which the election is being held.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 19, § 6, effective February 18.

1-13.5-509. Failure to receive mailed notice.

Any election for which a notice was mailed shall not be invalidated on the grounds that an eligible elector did not receive the ballot issue notice, mailed information, or mailed notification of the election required by law or the state constitution if the designated election official acted in good faith in making the mailing. Good faith is presumed if the designated election official or coordinated election official mailed the ballot issue notice, information, or notification to the addresses appearing on a registration list for the local government as provided by the county clerk and recorder, and, where applicable, the property owners list for the local government provided by the county assessor.

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Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 19, § 6, effective February 18.

1-13.5-510. Court-ordered elections.

(1) When an election is ordered by the court for a special district, the court shall authorize the designated election official to give notice, and take such other actions, as provided in the order.

(2) For an organizational election, the notice by publication must include the purposes of the election, the estimated operating and debt service mill levies and fiscal year spending for the first year following organization, and the boundaries of the special district. The notice by publication must recite the election date, which shall be not less than twenty days after publication of the election notice.

(3) For a dissolution election, the notice by publication must include the plan for dissolution or a summary of the plan and the place where a member of the public may inspect or obtain a copy of the complete plan. The notice by publication must recite the election date, which must be not less than twenty days after publication of the election notice.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 19, § 6, effective February 18. **L. 2016:** (1) amended, (HB 16-1442), ch. 313, p. 1267, § 5, effective August 10.

1-13.5-511. Certification of ballot.

(1) No later than sixty days before any election, the designated election official of each local government that intends to conduct an election shall certify the order of the ballot and ballot content. The order of the ballot and ballot content must include the name and office of each candidate for whom a petition or self-nomination form or letter has been filed with the designated election official and any ballot issues or ballot questions to be submitted to the eligible electors.

(2) After a designated election official has certified the order of the ballot and ballot content in accordance with subsection (1) of this section, the designated election official may recertify the ballot if:

(a) A candidate withdraws from a race, and the withdrawal would not change the order that the candidate names appear on the ballot as previously determined by the lot drawing; or

(b) There are technical revisions to a ballot issue or ballot question prior to the ballots being printed.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 20, § 6, effective February 18. **L.**

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2016: Entire section amended, (HB 16-1442), ch. 313, p. 1267, § 6, effective August 10.

1-13.5-512. Correction of errors.

The designated election official shall, on his or her own motion, correct without delay any error in publication of sample or official ballots that he or she discovers or that is brought to his or her attention and that can be corrected without interfering with the timely distribution of the ballots.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 20, § 6, effective February 18.

1-13.5-513. Election may be canceled - when.

(1) If the only matter before the electors in a nonpartisan election is the election of persons to office and if, at the close of business on the sixty-third day before the election or at any time thereafter, there are not more candidates than offices to be filled at the election, including candidates filing affidavits of intent to be a write-in candidate, the designated election official, if instructed by resolution of the governing body, shall cancel the election and declare the candidates elected.

(2) No later than twenty-five days before an election conducted as a coordinated election in November, and at any time prior to any other elections, a governing body may by resolution withdraw one or more ballot issues or ballot questions from the ballot. In such case, the ballot issues and ballot questions are deemed to have not been submitted and votes cast on the ballot issues and ballot questions will either not be counted or be deemed invalid by action of the governing body.

(3) If the electors are to consider the election of persons to office and ballot issues or ballot questions, the election may be canceled by the governing body only in the event that all of the conditions of subsection (1) of this section exist and that all ballot issues or ballot questions have been withdrawn from the ballot pursuant to subsection (2) of this section.

(4) Except as provided in subsection (2) of this section, no election may be canceled in part.

(5) Unless otherwise provided by an intergovernmental agreement pursuant to section 1-7-116, upon receipt of an invoice, the governing body shall within thirty days promptly pay all costs accrued by the county clerk and recorder and any applicable political subdivision attributable to the canceled election or withdrawn ballot issues or ballot questions.

(6) The governing body or designated election official shall provide notice by publication, as that term is defined in section 1-13.5-501, of the cancellation of the election. A copy of the notice must be posted at each polling location of the local government, in the office of the designated election official, and in the office of the clerk and recorder for each county with

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territorial boundaries that overlap in whole or in part with those of the local government and, for special districts, a copy of the notice must be filed in the office of the division of local government. The governing body shall also notify the candidates that the election was canceled and that they were elected by acclamation.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 20, § 6, effective February 18.

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PART 6
CONDUCT OF ELECTIONS

1-13.5-601. Hours of voting.

At all elections held under this article, the polls shall be opened at 7 a.m. and remain open until 7 p.m. of the same day. If a full set of election judges is not present at the hour of 7 a.m., an alternate election judge shall be appointed by the designated election official or judge in attendance at the polling place. The polls shall be opened if at least two election judges are present, even if the alternate judge has not arrived. Every person otherwise qualified to vote who is standing in line waiting to vote at 7 p.m. may vote.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 21, § 6, effective February 18.

1-13.5-602. Watchers - definition.

(1) (a) (I) Each candidate for office, or interested party in case of a ballot issue or ballot question, at a local government election is entitled to appoint an eligible elector to act on his or her behalf in every polling place in which he or she is a candidate or in which the issue or question is on the ballot; except that neither a current candidate for director nor any immediate family member, to the second degree, of such candidate is eligible to serve as a watcher for that candidate.

(II) As used in this section, "interested party" means an issue committee whose issue is on the ballot.

(b) The candidates or interested parties shall certify the name of the persons so appointed to the designated election official on forms provided by the designated election official. If multiple names are certified to the designated election official for or against any ballot issue or ballot question, and the designated election official reasonably determines that multiple watchers will impede the conduct of the election, the designated election official may, by lot, reduce the number of watchers to one for and one against the ballot issue or ballot question for each location to be watched.

(c) In case a watcher must leave the polling place, the watcher may designate an alternate to act on his or her behalf while he or she is absent if the alternate is made known to the election judges by an affidavit of the person first named as a watcher. A watcher serving at the polling place has the right to remain inside the polling place from at least fifteen minutes prior to the opening of the polls until after the completion of the count of votes cast at the election and the certification of the count by the election judges. Each watcher may maintain a list of eligible

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electors as the names are announced by the election judges and witness each step in the conduct of the election.

(2) Watchers shall take an oath administered by one of the election judges that they are eligible electors, that their name has been submitted to the designated election official as a watcher for this election, and that they will not in any manner make known to anyone the result of counting votes until the polls have closed.

(3) Watchers shall not:

(a) Interrupt or disrupt the processing, verification, or counting of any ballots or any other stage of the election;

(b) Write down any ballot numbers or any other identifying information about the electors;

(c) Handle the pollbooks, affidavits and self-affirmations, ballots, mail ballot envelopes, absentee ballot envelopes, voting or counting machines, or machine components;

(d) Interfere with the orderly conduct of any election process, including issuance of ballots, receiving of ballots, and voting or counting of ballots;

(e) Interact with election officials or election judges except for the individual identified by the designated election official; or

(f) Have a cellular phone, camera, recording device, laptop or tablet, or other electronic data capture device in the polling place.

(4) A designated election official may remove a watcher upon finding that the watcher commits or encourages fraud in connection with his or her duties, violates any of the limitations outlined in this article, violates his or her oath, or is abusive or threatening toward election officials or any other person.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 21, § 6, effective February 18. **L. 2016:** (1)(a)(I) amended, (HB 16-1442), ch. 313, p. 1268, § 7, effective August 10.

1-13.5-603. Judges open ballot box first.

In polling places that use an electronic voting system or paper ballots, the election judges, immediately before the opening of the polls, shall open the ballot box in the presence of the people assembled in the polling place, turn it upside down so as to empty it of all of its contents, and then lock it securely. The ballot box must not be reopened until the time for counting the ballots it contains.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 22, § 6, effective February 18.

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1-13.5-604. Judge to keep pollbook.

An election judge shall keep a pollbook, which shall contain one column headed "names of voters" and one column headed "number on ballot". The name and number on the ballot of each eligible elector voting must be entered in regular succession under the headings in the pollbook.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 23, § 6, effective February 18.

1-13.5-605. Preparing to vote.

(1) Any eligible elector desiring to vote shall write his or her name and address on a form available at the polling place and shall give the form to one of the election judges, who shall thereupon announce the same clearly and audibly. If the elector is unable to write, he or she may request assistance from one of the election judges, and such judge shall sign the form and witness the elector's mark. The form made available must contain in substance the following:

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I state under penalty of perjury that I am an elector who is eligible to vote each of
the ballots that I have cast in this election; that my signature and name are as shown
on this document; that I have not and will not cast more than one ballot for a matter
to be decided in this election; and that my ballots are cast in accordance with
applicable law.
Name: ..............................
Date:  ..............................
Signature of elector: ..............................
If the person's name is found on the registration list or property owners list, as
applicable, by the election judge having charge thereof, he or she shall repeat the
name, and the elector shall be allowed to enter the immediate voting area.
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(2) (a) Any person desiring to vote at any special district election as an eligible elector who does not appear on the registration list or property owners list for the district shall sign a self-affirmation that the person is an elector of the special district. The self-affirming oath or affirmation shall be on a form that contains in substance the following:

```
I, (printed name), who reside at (address), am an elector of this (name of special
district) district and desire to vote at this election. I do solemnly swear (or
affirm) that I am registered to vote in the state of Colorado and qualified to vote in
this special district election as:
____ a resident of the district or area to be included in the district; or
____ the owner of taxable real or personal property situated within the boundaries of
the special district or area to be included within the special district; or
____ a person who is obligated to pay taxes under a contract to purchase taxable
property in the special district or the area to be included within the special
district; or
____ the spouse or civil union partner of (name of spouse or civil union partner) who
is the owner of taxable real or personal property situated within the boundaries of
the special district or area to be included within the special district.
I have not voted previously at this election.
Date _________________
Signature of elector _________________.
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(b) A person otherwise eligible to vote in a local government election that is not a special district election whose name has been omitted from the registration list or property owner's list shall be permitted to vote by:

(I) Taking substantially the following self-affirmation:

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I do solemnly swear or affirm that I am a citizen of the United States of the age of
eighteen years or older; that I am a registered elector in this political subdivision;
that I am eligible to vote at this election; and that I have not previously voted at
this election; or
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(II) Presenting to an election judge a certificate of registration issued on election day by the county clerk and recorder or a certificate of property ownership issued on election day by the county assessor as applicable; or

(III) An election judge verifying, on election day, the person's registration with the county clerk and recorder or through the statewide voter registration records maintained by the secretary of state, or, as applicable, obtaining verification of the person's property ownership from the county assessor.

(3) An election judge shall promptly contact the county clerk and recorder or the county assessor for verification required under paragraph (b) of subsection (2) of this section so that every eligible elector present at the polling place is allowed to vote. Notation of verification of registration or property ownership shall be made in the pollbook next to the eligible elector's name.

(4) The self-affirmation provided in subsection (2) of this section must be accepted in lieu of the verification of registration or property ownership unless the person's right to vote is successfully challenged.

(5) Besides the election officials, not more than four eligible electors in excess of the number of voting booths or voting machines are allowed within the immediate voting area at one time.

(6) The completed signature forms must be returned with other election materials to the designated election official. If no challenges are made, the forms may be destroyed after forty-five days following election day.

(7) In precincts using paper ballots, an election judge shall give the eligible elector one, and only one, ballot, which the election judge shall remove from the package of ballots by tearing or cutting the ballot along the perforated or dotted line. Before delivering the ballot to an elector, the election judge having charge of the ballots shall endorse his or her initials on the duplicate stub. An election judge shall enter the name of the elector and number of said ballot in the pollbook.

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Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 23, § 6, effective February 18.

1-13.5-606. Manner of voting in precincts using paper ballots.

(1) In precincts that use paper ballots, upon receiving his or her ballot, an eligible elector shall immediately retire alone to one of the voting booths provided and shall prepare the ballot by marking or stamping in ink or indelible pencil, in the appropriate margin or place, a cross mark (x) opposite the name of the candidate of the elector's choice for each office to be filled; except that no cross mark (x) is required opposite the name of a write-in candidate. In case of a question submitted to a vote of the people, the elector shall mark or stamp, in the appropriate margin or place, a cross mark (x) opposite the answer that he or she desires to give. Before leaving the voting booth, the elector shall fold the ballot without displaying the marks thereon so that the contents of the ballot are concealed and the stub can be removed without exposing any of the contents of the ballot, and the elector must keep the ballot folded until the elector deposits the ballot in the ballot box.

(2) Each eligible elector who has prepared a ballot and is ready to cast his or her vote shall then leave the voting booth and approach the election judge in charge of the ballot box. The elector shall give his or her name to that judge, who shall announce the name of such elector and the number upon the duplicate stub of the ballot, which number must correspond with the stub number previously placed on the registration list or pollbook. If the stub number of the ballot corresponds and is identified by the initials of the election judge placed thereupon, the election judge shall then remove the duplicate stub from the ballot. The ballot must then be returned to the eligible elector, who shall, in full view of the election judges, cast his or her vote by depositing the ballot in the ballot box.

(3) Each eligible elector shall mark and deposit his or her ballot without undue delay and shall leave the immediate voting area as soon as the elector votes. No elector shall occupy a voting booth already occupied by another, nor remain within the immediate voting area for more than ten minutes, nor occupy a voting booth for more than five minutes if all such booths are in use and other electors are waiting to occupy the same. No eligible elector whose name has been entered on the pollbook is allowed to reenter the immediate voting area during the election except when accompanied by an election judge.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 25, § 6, effective February 18.

1-13.5-607. Eligible elector requiring assistance.

(1) Notwithstanding any provision of section 1-13.5-606 to the contrary, if, at any election, an eligible elector declares under oath to the election judges of the polling place that, by reason of visual impairment or other physical disability or inability to read or write, the elector is unable

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to prepare his or her ballot or operate the voting machine without assistance, the elector may, upon request, receive the assistance of any one of the election judges or, at the elector's option, any other person selected by the elector requiring assistance. No person, other than an election judge, is permitted to enter a voting booth as an assistant to more than one elector.

(2) A notation must be made in the pollbook opposite the name of each voter thus assisted indicating that the voter was assisted.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 25, § 6, effective February 18.

1-13.5-608. Spoiled ballots.

In polling places that use an electronic voting system or paper ballots, no person shall take or remove any ballot from the polling place before the close of the polls. If any elector spoils a ballot, he or she may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one. The spoiled ballots so returned shall be immediately canceled and shall be preserved and returned to the designated election official along with other election records and supplies.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 26, § 6, effective February 18.

1-13.5-609. Counting paper ballots.

(1) As soon as the polls at any election are finally closed, the election judges shall immediately open the ballot box and proceed to count the votes cast, and, before the election judges adjourn, the counting thereof shall continue until finished. The election judges shall first count the number of ballots in the box. If the ballots are found to exceed the number of names entered on the pollbook, the election judges shall then examine the official endorsements upon the ballots, and if, in the unanimous opinion of the judges, any of the ballots in excess of the number on the pollbook do not bear the proper official endorsement, they shall be put into a separate pile, and a separate record and return of the votes in such ballots shall be made under the heading "excess ballots". When the ballots and the pollbook agree, the election judges shall proceed to count the votes. Each ballot shall be read and counted separately, and every name separately marked as voted for on such ballot where there is no conflict to obscure the intention of the voter, and shall be read and marked upon the tally sheets before proceeding to any other ballot. Each ballot, excepting excess ballots, shall be read and counted and placed upon the tally sheets in like manner.

(2) When all the votes have been read and counted, the ballots, together with one of the tally lists, shall be placed in a box or appropriate container, and the opening shall be carefully sealed, and each of the election judges shall place his or her initials on said seal. The sealed box shall be delivered to the designated election official pursuant to section 1-13.5-614.

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(3) All persons, except election judges and watchers, are excluded from the place where the counting is being carried on until the count has been completed.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 26, § 6, effective February 18.

1-13.5-610. Counting by counting judges.

(1) In precincts with counting judges, the receiving judges as directed by the designated election official shall deliver to the counting judges the ballot box containing cast ballots and the receiving judges shall then use another ballot box furnished for voting. The receiving judges shall open, empty, and lock the alternate ballot box in the manner prescribed in section 1-13.5-603.

(2) When the counting judges have counted the votes in a ballot box, they shall return the empty ballot box to the receiving judges and exchange it for the box containing ballots cast since taking possession of the first ballot box. The judges shall continue to exchange ballot boxes in the same manner until the polls are closed and shall continue counting until all ballots have been counted.

(3) When an exchange of ballot boxes is made as described in subsection (2) of this section, the receiving judges shall sign and furnish to the counting judges a statement showing the number of ballots that are to be found in each ballot box as indicated by the pollbooks. The counting judges shall then count ballots in the manner prescribed in section 1-13.5-609.

(4) The designated election official may provide a separate room or building for the counting judges.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 26, § 6, effective February 18.

1-13.5-611. Tally sheets.

As the election judges open and read the ballots, the votes that each candidate and any ballot issue or ballot question received must be carefully marked down, upon tally sheets prepared by the designated election official for that purpose, by any appropriate election official.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 27, § 6, effective February 18.

1-13.5-612. Defective ballots.

(1) If an elector votes for more names than there are persons to be elected to an office, or, if it is impossible to determine the choice of an elector for an office to be filled, the elector's ballot

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will not be counted for that office. A defective or an incomplete cross marked on any ballot in a proper place must be counted if there is no other mark or cross on such ballot indicating an intention to vote for some person other than those indicated by the first mentioned defective cross or mark. No ballot without the official endorsement, except as provided in section 1-13.5-704, may be deposited in the ballot box, and only ballots provided in accordance with this article shall be counted. If the election judges discover in the counting of votes that the name of any candidate voted for is misspelled or the initial letters of a candidate's given name are transposed or omitted in part or altogether on the ballot, the vote for the candidate must be counted if the intention of the elector to vote for the candidate is apparent.

(2) Ballots not counted must be marked "defective" on the back thereof and shall be preserved for such time as is provided in section 1-13.5-616 for ballots and destroyed as therein directed.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 27, § 6, effective February 18.

1-13.5-613. Judges' certificate - statement on ballots.

(1) As soon as all the votes have been read and counted, the election judges shall make a certificate stating:

(a) The name of each candidate, designating the office for which each candidate received votes;

(b) The number of votes each candidate received, which number must be expressed in words, at full length, and in numerical figures; and

(c) The ballot issue or ballot question, if any, voted upon and the number of votes counted for and against the ballot issue or ballot question.

(2) (a) In addition, the election judges shall make a statement in writing showing the number of ballots voted, containing a separate statement that identifies and specifies each of the following:

(I) The number of ballots delivered to electors;

(II) The number of ballots not delivered to electors;

(III) The number of unofficial and substitute ballots voted;

(IV) The number of spoiled ballots; and

(V) The number of ballots returned.

(b) All unused ballots, spoiled ballots, and stubs of ballots voted must be returned with the

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statement described in paragraph (a) of this subsection (2).

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 27, § 6, effective February 18.

1-13.5-614. Delivery of election returns, ballot boxes, and other election papers.

When all the votes have been read and counted, an election judge shall deliver to the designated election official the certificate and statement required by section 1-13.5-613, the ballot boxes and all keys or seals thereto, and the registration and property owners lists, pollbooks, tally sheets, spoiled ballots, unused ballots, ballot stubs, oaths, affidavits, and other election papers and supplies. The delivery must be made at once and with all convenient speed, and informality in delivery does not invalidate the vote of any polling place when delivery has been made prior to the completion of the official abstract of the votes by the canvassers pursuant to section 1-13.5-1305. The designated election official shall provide a receipt for all papers so delivered.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 28, § 6, effective February 18.

1-13.5-615. Abstract of votes - judges to post returns.

(1) (a) In addition to all certificates otherwise required to be made of the count of votes cast at any election, the election judges are required to make an abstract of the count of votes containing the names of the offices, the names of the candidates, any ballot issues or ballot questions voted upon, and the number of votes counted for and against each candidate or ballot measure.

(b) Suitable blanks for the required abstract shall be prepared, printed, and furnished to all election judges at the same time and in the same manner as other election supplies are furnished.

(2) Immediately upon completion of the count, the abstract required under subsection (1) of this section must be posted in a conspicuous place that can be seen from the outside of the polling place. The abstract may be removed at any time forty-eight hours after the polls close.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 28, § 6, effective February 18.

1-13.5-616. Preservation of ballots and election records.

(1) The ballots, when not required to be taken from the sealed box for the purpose of election contests, shall remain in the sealed box in the custody of the designated election official until twenty-five months after the date the polls closed for the election at which the ballots were cast or until the time has expired for which the ballots would be needed in any contest proceedings, at

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which time the sealed box must be opened by the designated election official and the ballots destroyed by fire, shredding, burial, or by any other method approved by the governing body.

(2) The designated election official shall preserve all other official election records and forms for at least six months following the date the polls closed.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 29, § 6, effective February 18.

1-13.5-617. Ranked voting methods.

(1) Notwithstanding any provision of this article to the contrary, a local government may use a ranked voting method to conduct a regular election to elect the members of the governing body of the local government in accordance with section 1-7-1003, and the rules adopted by the secretary of state pursuant to section 1-7-1004.

(2) A local government conducting an election using a ranked voting method may adapt the requirements of this article, including requirements concerning the form of the ballot, the method of marking the ballot, the procedure for counting ballots, and the form of the election judges' certificate, as necessary for compatibility with the ranked voting method.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 29, § 6, effective February 18.

1-13.5-618. Covered voters to receive mail ballots.

Notwithstanding any provision of this article 13.5 to the contrary, the designated election official of a local government shall mail a ballot to every eligible elector of the local government who is a covered voter, as that term is defined in section 1-8.3-102, for any election conducted under this article 13.5.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 29, § 6, effective February 18. **L. 2021:** Entire section amended, (SB 21-160), ch. 133, p. 537, § 4, effective September 7.

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PART 7
VOTING MACHINES

1-13.5-701. Use of voting machines.

Voting machines may be used in any local government election if the governing body, by resolution, authorizes their use.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 29, § 6, effective February 18.

1-13.5-702. Judges to inspect machines - when.

The election judges of each polling place at which voting machines are used shall meet at the polling place at least forty-five minutes before the time set for the opening of the polls at each election. Before the polls open for an election, each judge shall carefully examine each machine used in the polling place and see that no vote has been cast and that every counter, except the protective counter, registers zero.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 29, § 6, effective February 18.

1-13.5-703. Sample ballots, ballot labels, and instruction cards.

(1) Sample ballots must be produced for display at polling places in which voting machines are used and are subject to public inspection. The sample ballots must be arranged in the form of a diagram showing the front of the voting machine as it will appear after the official ballot labels are arranged on the voting machine for voting. The designated election official shall provide sample ballots for each polling place. The sample ballots must be delivered to the election judges and posted in the polling place for display on election day.

(2) The designated election official or his or her designee shall also prepare and place on each voting machine to be used in the polling place a set of official ballot labels arranged in the manner prescribed for the official election ballot to be used on voting machines. The designated election official shall deliver the required number of voting machines, equipped with the official ballot, to each polling place no later than the day prior to the day of election.

(3) Instruction cards to guide eligible electors in casting their ballots on voting machines must be supplied by the designated election official as provided in section 1-13.5-906.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 30, § 6, effective February 18.

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1-13.5-704. Instructions to vote.

In case an eligible elector, after entering the voting machine or voting booth, asks for further instructions concerning the manner of voting, an election judge shall give such instruction to him or her; except that no judge or other election officer or person assisting such elector shall enter the voting machine or voting booth, except as provided in section 1-13.5-607, or in any manner request, suggest, or seek to persuade or induce any such elector to vote for any particular candidate, or for or against any particular ballot issue or ballot question. After receiving instruction, the eligible elector shall vote as in the case of an unassisted voter.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 30, § 6, effective February 18.

1-13.5-705. Length of time to vote.

No eligible elector shall remain within the voting machine booth longer than three minutes. If an eligible elector refuses to leave after a lapse of three minutes, the elector shall be removed by the election judges, but the judges, in their discretion, may permit an elector to remain longer than three minutes.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 30, § 6, effective February 18.

1-13.5-706. Judge to watch voting machines.

The election judges shall designate at least one judge to be stationed beside the entrance to the voting machine or voting booth during the entire period of the election to see that it is properly closed after an elector has entered to vote. At such intervals as the judge deems proper or necessary, the judge shall examine the face of the machine to ascertain whether it has been defaced or injured, to detect the wrongdoer, and to repair any injury.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 30, § 6, effective February 18.

1-13.5-707. Designated election official to supply seals for voting machines.

The designated election official shall supply each polling place with a seal for each voting machine for the purpose of sealing each machine after the polls are closed and an envelope for the return of the keys and seals to the machine, as applicable, with the election returns.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 31, § 6, effective February 18.

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1-13.5-708. Close of polls and count of votes.

As soon as the polls are closed, the election judges shall immediately lock and seal each voting machine to prevent further voting. Immediately after each machine is locked and sealed, the election judges shall open the counting compartments and count the votes. After the total votes for each candidate and each ballot issue or ballot question, as applicable, have been ascertained, the election judges shall make a certificate of votes cast, in numerical figures only, and return the same to the designated election official as provided in section 1-13.5-613.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 31, § 6, effective February 18.

1-13.5-709. Election laws apply - separate absentee ballots permitted.

Nothing in this part 7 prohibits the use and acceptance of separate paper ballots by absentee voters.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 31, § 6, effective February 18.

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PART 8
ELECTRONIC VOTING SYSTEMS

1-13.5-801. Use of electronic voting system.

An electronic voting system may be used in any local government election if the governing body authorizes its use.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 31, § 6, effective February 18.

1-13.5-802. Sample ballots.

Sample ballots shall be printed and in the form of the official ballot but on paper of a different color from the official ballot. The designated election official shall provide that sample ballots for each polling place are delivered to the election judges and posted in the polling place on election day.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 31, § 6, effective February 18.

1-13.5-803. Ballots - electronic voting.

(1) Ballot pages or ballot cards placed upon voting devices shall be, so far as practicable, in the same order of arrangement as provided for paper ballots; except that the pages or cards shall be of the size and design required by the vote recorder or the electronic vote counting equipment, as applicable, and may be printed on a number of separate pages that are placed on the voting device or on one or more ballot cards.

(2) If votes are recorded on a ballot card, a separate write-in ballot may be provided, which shall be in the form of a paper ballot on which the eligible elector may write in the titles of the office and the names of persons not on the printed ballot for whom he or she wishes to vote.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 31, § 6, effective February 18.

1-13.5-804. Preparation for use - electronic voting.

(1) Prior to an election in which an electronic voting system will be used, the designated election official shall:

(a) Have the vote recorders or punching devices, or both, as applicable, prepared for voting; and

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(b) Inspect and determine that each recorder or device is in proper working order; and

(c) Cause a sufficient number of such recorders or devices to be delivered to each polling place in which the electronic voting system is to be used.

(2) The designated election official shall supply each polling place in which vote recorders or voting devices are to be used with a sufficient number of ballot cards, sample ballots, ballot boxes, write-in ballots, if required, and other supplies and forms as may be required. Each ballot card shall have a serially numbered stub attached, which the election judge shall remove before the card is deposited in the ballot box.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 31, § 6, effective February 18.

1-13.5-805. Instructions to vote.

In case any eligible elector, after commencing to vote, asks for further instructions concerning the manner of voting, an election judge shall give such instructions to the elector; but no judge or other election officer or person assisting such elector shall request, suggest, or seek to persuade or induce any such elector to vote for any particular candidate or for or against any particular ballot issue or ballot question. After receiving such instructions, the elector shall vote as in the case of an unassisted voter.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 32, § 6, effective February 18.

1-13.5-806. Ballots.

The designated election official shall provide sufficient ballots for every election in which an electronic voting system is used.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 32, § 6, effective February 18.

1-13.5-807. Distribution of ballots - receipt - filing.

In a local government election in which an electronic voting system is used, the designated election official shall distribute to the election judges in the respective polling places a sufficient number of ballots. The ballots must be placed in one or more sealed packages for each polling place with marks on the outside of each stating clearly the polling place for which it is intended and the number of ballots enclosed. Such package shall be delivered to one of the election judges of such polling place no later than the day before the election. A receipt for the delivered ballots must be given by the election judge who received them. The receipt must be filed with the designated election official, who shall also keep a record of the time and manner in which each

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of said packages was sent and delivered.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 32, § 6, effective February 18.

1-13.5-808. Instruction cards - posting - content.

(1) The designated election official shall furnish to the election judges of each polling place a sufficient number of instruction cards to guide eligible electors in preparing their ballots. The election judges shall post at least one card in each polling place on the day of election. The cards shall be printed in large, clear type and contain full instructions to the elector as to what should be done:

(a) To obtain a ballot for voting;

(b) To prepare the ballot for deposit in the ballot box;

(c) To obtain a new ballot in the place of one spoiled by accident or mistake; and

(d) To obtain assistance in marking ballots.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 32, § 6, effective February 18.

1-13.5-809. Close of polls - ballot return - transfer box - delivery.

(1) After the polls close, the election judges shall secure the vote recorders or the voting devices, as applicable, against further use and prepare a ballot return in duplicate showing the number of voters as indicated by the pollbook who have voted in the polling place, the number of official ballot cards received, and the number of spoiled and unused ballot cards returned.

(2) The original copy of the ballot return prepared pursuant to subsection (1) of this section shall be deposited in a durable transfer box along with all voted and spoiled ballots. The transfer box shall then be sealed in such a way as to prevent tampering with the box or its contents, using a numbered seal provided by the designated election official. One judge shall deliver the sealed transfer box to the counting center or other place identified by the designated election official.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 33, § 6, effective February 18.

1-13.5-810. Testing of electronic ballot counting equipment.

(1) The designated election official shall have the electronic ballot counting equipment tested pursuant to subsection (2) of this section to ascertain that it will accurately count the votes cast for all offices and all measures.

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(2) (a) The electronic ballot counting equipment shall be tested at least three times, once on the day before the election, once just prior to the start of the count on election day, and finally at the conclusion of the counting. The designated election official may conduct any additional tests he or she deems necessary.

(b) The designated election official shall vote and retain at least twenty-five test ballots, observe the tabulation of all test ballots by means of the electronic ballot counting equipment, and compare the tabulation with the previously retained records of the test vote count. The cause of any discrepancies shall be corrected prior to the actual vote tabulation.

(3) (a) All test materials, when not in use, must be kept in a secure location.

(b) After the final conclusion of the counting, all programs, test materials, and ballots must be sealed and retained as provided for paper ballots.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 33, § 6, effective February 18.

1-13.5-811. Electronic vote counting - procedure.

(1) All proceedings at the counting center must be under the direction of the designated election official and must be conducted under the observation of watchers, so far as practicable; but no unauthorized person may touch any ballot or ballot card or return. If any ballot is damaged or defective so that it cannot properly be counted by the electronic vote counting equipment, a true duplicate copy shall be made of the damaged ballot in the presence of two election judges. The duplicate ballot must be substituted for the damaged ballot. All duplicate ballots shall be clearly labeled as such and shall bear a serial number, which is recorded on the damaged ballot.

(2) When certified by the designated election official, the return printed by the electronic vote counting equipment, to which have been added write-in votes, constitutes the official return of each polling place. The designated election official may from time to time release unofficial returns. Upon completion of the count, the official returns are open to the public.

(3) Absentee ballots must be counted at the counting center in the same manner as ballots voted at the polling place. Valid write-in votes may be counted at the polling place by the election judges or at the counting center.

(4) If for any reason it becomes impracticable to count all or a part of the ballots with electronic vote counting equipment, the designated election official may direct that the ballots be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(5) The receiving, opening, and preservation of the transfer boxes and their contents are the

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responsibilities of the designated election official, who shall provide adequate personnel and facilities to assure accurate and complete election results. Any indication of tampering with the ballots or ballot cards or other fraudulent action must be immediately reported to the district attorney, who shall immediately investigate the action and report his or her findings within ten days to the designated election official and, subject to prosecutorial discretion, shall prosecute to the full extent of the law any person responsible for the fraudulent action. The conduct of local government elections when electronic voting systems are used must follow, as nearly as practicable, the conduct of general and primary elections when such systems are used.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 34, § 6, effective February 18.

1-13.5-812. Election laws pertaining to use of electronic voting systems - separate absentee ballots permitted.

A local government may use the provisions of part 6 of article 5 of this title not inconsistent with this article for elections conducted under this article in which electronic voting systems are used in polling places. Nothing in this article prohibits the use of a separate paper ballot by absentee voters.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 34, § 6, effective February 18.

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PART 9
PAPER BALLOTS

1-13.5-901. Ballot boxes.

The governing body of each local government using paper ballots shall provide at least one ballot box for each polling place. Each ballot box shall be strongly constructed so as to prevent tampering, with a small opening at the top and with a lid to be locked. The ballot boxes and keys or seals shall be kept by the designated election official and delivered to the election judges within one day immediately preceding any local government election, to be returned as provided in section 1-13.5-614. Nothing in this section prevents the governing body from obtaining ballot boxes from the office of the county clerk and recorder.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 35, § 6, effective February 18.

1-13.5-902. Ballots and sample ballots - delivery - format.

(1) (a) The designated election official of each local government using paper ballots shall provide printed ballots for the local government election. The official ballots shall be printed and in the possession of the designated election official at least thirty days before the election.

(b) In addition to the requirements of paragraph (a) of this subsection (1), sample ballots must be printed in the form of the official ballots and are subject to public inspection. The sample ballots must be printed upon paper of a different color from the official ballots. Sample ballots must be delivered to the election judges and posted with the instruction cards provided under section 1-13.5-906.

(2) Every ballot must contain the names of all duly nominated candidates for the offices to be voted for at that election, except those who have died or withdrawn, and the ballot must contain no other names. The names of the candidates for each office must be printed on the ballot without political party designation and without any title or degree designating the business or profession of the candidate. The names must be arranged by lot by the designated election official at any time prior to the certification of the ballot. The designated election official shall notify the candidates of the time and place of the lot drawing.

(3) The ballots must be printed so as to give to each eligible elector a clear opportunity to designate his or her choice of candidates, ballot issues, and ballot questions by a mark as instructed. Words may be printed on the ballot that will aid the elector, such as "vote for not more than one".

(4) At the end of the list of candidates for each different office, there must be one or more

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blank spaces in which the elector may write the name of any eligible person not printed on the ballot who has filed an affidavit of intent to be a write-in candidate pursuant to section 1-13.5-305. The number of spaces provided shall be the lesser of the number of eligible electors who have properly filed an affidavit of intent to be a write-in candidate or the number of persons to be elected to the office. No such blank spaces shall be provided if no eligible person properly filed an affidavit of intent to be a write-in candidate.

(5) The names of the candidates for each office must be arranged under the designation of the office. The designated election official shall not print, in connection with any name, any title or degree designating the business or profession of the candidate. Each candidate's name may include one nickname if the candidate regularly uses the nickname and the nickname does not include any part of a political party name.

(6) If no candidate is duly nominated and no person properly files an affidavit of intent to be a write-in candidate for an office, the following text must appear under the designation of the office: "There are no candidates for this office".

(7) (a) Whenever the approval of a ballot issue or ballot question is submitted to the vote of the people, the ballot issue or question must be printed on the ballot following the lists of candidates. Ballot issues and ballot questions must be listed in the following order, as applicable: Issues to increase taxes, issues to increase debt, citizen petitions, and other referred measures.

(b) The ballot issue or question must be identified by the name of the local government submitting the ballot issue or question followed by a letter.

(8) (a) The extreme top part of each ballot must be divided by two perforated or dotted lines into two spaces, each of which must be not less than one inch in width, the top portion being known as the stub and the next portion as the duplicate stub. Upon each of said stubs nothing is to be printed except the number of the ballot, and the same number must be printed on both stubs. Stubs and duplicate stubs of ballots must both be numbered consecutively. There must be printed on the stub of an absentee ballot "Absentee Ballot Number [...]", and such stubs must be numbered consecutively beginning with number one. All ballots must be uniform and of sufficient length and width to allow for the names of candidates and the proposed questions to be printed in clear, plain type with a space of at least one-half inch between the different columns on said ballot. On each ballot must be printed the endorsement "official ballot for . . .", and after the word "for" must follow the designation of the local government for which the ballot is prepared, the date of the election, and a facsimile of the signature of the designated election official. The ballot shall not contain any caption or other endorsement or number. Each designated election official shall use precisely the same quality and tint of paper, the same kind of type, and the same quality and tint of plain black ink for all ballots furnished by the designated election official at one election.

(b) A duplicate stub is not required for a ballot that is prepared for an independent mail ballot

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election pursuant to part 11 of this article.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 35, § 6, effective February 18. **L. 2016:** (8) amended, (HB 16-1442), ch. 313, p. 1268, § 8, effective August 10.

1-13.5-903. Correction of errors.

(1) The designated election official shall correct, without delay, any errors in publication or in sample or official ballots that are discovered or brought to the official's attention and that can be corrected without interfering with the timely distribution of the ballots.

(2) If it appears by verified petition of a candidate or the candidate's agent submitted to any district court that an error or omission occurred in the publication of the names or description of the candidates or in the printing of sample or official election ballots and the error has been brought to the attention of the designated election official and not been corrected, the court shall issue an order requiring the designated election official to correct the error immediately or to show cause why the error should not be corrected. Costs, including reasonable attorney fees, may be assessed in the discretion of the court against either party.

(3) If, before the date set for election, a duly nominated candidate withdraws by filing an affidavit of withdrawal with the designated election official, or dies and the fact of the death becomes known to the designated election official before the ballots are printed, the name of the candidate will not be printed on the ballots. If the ballots are already printed, the votes cast for the withdrawn or deceased candidate are invalid and will not be counted.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 36, § 6, effective February 18.

1-13.5-904. Printing and distribution of ballots.

In local government elections in which paper ballots are used, the designated election official shall cause to be printed or copied and distributed to the election judges in each respective polling place a sufficient number of ballots. The ballots shall be sent in one or more sealed packages for each polling place, with marks on the outside of each clearly stating the polling place for which it is intended and the number of ballots enclosed. The packages must be delivered to one of the election judges of each polling place no later than the day before the election. The election judge who receives the ballots thus delivered shall give receipt for them, which receipt must be filed with the designated election official, who shall also keep a record of the time and manner in which each of said packages was sent and delivered. The election judge receiving the package shall produce the same, with the seal unbroken, in the proper polling place at the opening of the polls on election day and, in the presence of all election judges for the polling place, shall open the package.

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Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 37, § 6, effective February 18.

1-13.5-905. Substitute ballots.

If the ballots to be furnished to any election judge are not delivered by 8 p.m. on the day before election day, or if after delivery they are destroyed or stolen, the designated election official shall see that other ballots are prepared, as nearly in the form prescribed as practicable, with the word "substitute" printed in brackets immediately under the facsimile signature of the designated election official. Upon receipt of the substitute ballots, accompanied by a written and sworn statement of the designated election official that the same have been so prepared and furnished by him or her and that the original ballots were not received or were destroyed or stolen, the election judges shall use the substitute ballots at the election. If for any cause none of the official ballots or substitute ballots prepared by the designated election official are ready for distribution at any polling place, or if the supply of ballots is exhausted before the polls are closed, unofficial ballots, printed or written, made as nearly as possible in the form of the official ballots, may be used until substitutes prepared by the designated election official are printed and delivered.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 37, § 6, effective February 18.

1-13.5-906. Instruction cards - content.

(1) The designated election official shall furnish to the election judges of each polling place a sufficient number of instruction cards to guide electors in preparing their ballots. The election judges shall post at least one card in each polling place on the day of the election. Such cards shall be printed in large, clear type and contain full instructions to the electors about how to:

(a) Obtain ballots for voting;

(b) Prepare the ballot for deposit in the ballot box;

(c) Obtain a new ballot in the place of one spoiled by accident or mistake; and

(d) Obtain assistance in marking ballots.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 38, § 6, effective February 18.

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PART 10
ABSENTEE VOTING

1-13.5-1001. When absentee electors may vote.

Any eligible elector of a local government may cast an absentee voter's ballot at the election in the manner provided in sections 1-13.5-1002 to 1-13.5-1007.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 38, § 6, effective February 18.

ANNOTATION

Annotator's note. The following annotations include a case decided under former provisions similar to this section.

The provision for absentee voting is constitutional. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

The provision for absentee voting was enacted for the purpose of procuring a fuller expression of the public will at the ballot box. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

1-13.5-1002. Application for absentee voter's ballot - delivery - list.

(1) (a) (I) Requests for an application for an absentee voter's ballot may be made orally or in writing. The application may be in the form of a letter. The application may request that the applicant be added to the permanent absentee voter list for the local government.

(II) Applications for absentee voters' ballots shall be filed in writing and be personally signed by the applicant or a family member related by blood, marriage, civil union, or adoption to the applicant. If the applicant is unable to sign the application, the applicant shall make such applicant's mark on the application, which must be witnessed in writing by another person.

(b) The application must be filed with the designated election official not later than the close of business on the Tuesday immediately preceding the next local government election in which the absentee voter wishes to vote by absentee voter's ballot.

(2) (a) Upon timely receipt of an application for an absentee voter's ballot, the designated election official receiving it shall examine the records of the county clerk and recorder or county assessor, as appropriate, to ascertain whether or not the applicant is registered and lawfully entitled to vote as requested.

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(b) If the person is found to be so entitled, the designated election official shall deliver, as soon as practicable but not more than seventy-two hours after the blank ballots have been received, an official absentee voter's ballot, an identification return envelope with the affidavit or the envelope properly filled in as to address of residence as shown by the records of the county clerk and recorder, and an instruction card. The identification return envelope must state "Do not forward. Address correction requested." or any other similar statement that is in accordance with United States postal service regulations. The delivery must be made to the applicant either personally in the designated election official's office or by mail to the mailing address given in the application for an official absentee voter's ballot.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 38, § 6, effective February 18. **L. 2016:** (1)(b) and (2)(b) amended, (HB 16-1442), ch. 313, p. 1268, § 9, effective August 10.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Absentee voter statutes must be strictly construed, and a voter who wishes to cast such a ballot must comply exactly with all applicable statutory requirements. Jardon v. Meadowbrook-Fairview Metro. Dist., 190 Colo. 528, 549 P.2d 762 (1976).

Findings that voters came within the application requirements not disturbed on review. Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936).

1-13.5-1003. Application for permanent absentee voter status.

(1) Any eligible elector of a political subdivision may apply for permanent absentee voter status. The application for permanent absentee voter status must be made in writing or by facsimile using an application form or letter furnished by the designated election official of the political subdivision. The application must contain the same information submitted in connection with an application for an absentee voter's ballot pursuant to section 1-13.5-1002.

(2) Upon receipt of an application for permanent absentee voter status, the designated election official shall process the application in the same manner as an application for an absentee voter's ballot. If the designated election official determines that the applicant is an eligible elector, the designated election official shall place the eligible elector's name on the list maintained by the political subdivision pursuant to section 1-13.5-1004 of those eligible electors to whom an absentee voter's ballot is mailed every time there is an election conducted by the political subdivision for which the eligible elector has requested permanent absentee voter status.

(3) If there is no designated election official presently appointed in the local government, the

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secretary of the local government shall process the application for permanent absentee status in accordance with subsections (1) and (2) of this section.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 39, § 6, effective February 18. **L. 2016:** (3) added, (HB 16-1442), ch. 313, p. 1269, § 10, effective August 10.

1-13.5-1004. List of absentee voters' ballots - removal from list.

(1) The designated election official shall keep a list of names of eligible electors who have applied for absentee voters' ballots and of those permanent absentee voters placed on the list pursuant to section 1-13.5-1003 (2), with the date on which each application was made, the date on which the absentee voter's ballot was sent, and the date on which each absentee voter's ballot was returned. If an absentee voter's ballot is not returned, or if it is rejected and not counted, that fact must be noted on the list. The list is open to public inspection under proper regulations.

(2) (a) An eligible elector whose name appears on the list as a permanent absentee voter must remain on the list and must be mailed an absentee voter's ballot for each election conducted by the political subdivision for which the eligible elector has requested permanent absentee voter status.

(b) An eligible elector must be deleted from the permanent absentee voter list if:

(I) The eligible elector notifies the designated election official that he or she no longer wishes to vote by absentee voter's ballot;

(II) The absentee voter's ballot sent to the eligible elector is returned to the designated election official as undeliverable;

(III) The eligible elector has been deemed "Inactive" pursuant to section 1-2-605; or

(IV) The person is no longer eligible to vote in the political subdivision.

(3) The designated election official shall keep a list of the names of eligible electors applying for an absentee voter's ballot, the number appearing on the stub of the ballot issued to such eligible elector, and the date the ballot is delivered or mailed. This information may be recorded on the registration record or registration list before the registration book or list is delivered to the election judges. A separate list of the eligible electors who have received absentee voter's ballots must be delivered to the election judges in the polling place designated for counting absentee voter's ballots, or, if the designated election official elects to deliver absentee voters' envelopes received from electors to the election judges of such polling place, as provided by section 1-13.5-1006, a separate list of the eligible electors who have received absentee voter's ballots must be delivered to the election judges of each such polling place.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 39, § 6, effective February 18.

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1-13.5-1005. Self-affirmation on return envelope.

(1) The return envelope for an absentee voter's ballot must have printed on its face a self-affirmation substantially in the form provided in section 1-13.5-605 (1).

(2) If applicable, the self-affirmation provided in section 1-13.5-605 (2) may be substituted for the self-affirmation in section 1-13.5-605 (1).

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 40, § 6, effective February 18.

1-13.5-1006. Manner of absentee voting by paper ballot.

(1) Any eligible elector applying for and receiving an absentee voter's ballot, in casting the ballot, shall make and subscribe to the self-affirmation on the return envelope. The voter shall then mark the ballot. The voter shall fold the ballot so as to conceal the marking, deposit it in the return envelope, and seal the envelope securely. The envelope may be delivered personally or mailed by the voter to the designated election official issuing the ballot. It is permissible for a voter to deliver the ballot to any person of the voter's own choice or to any duly authorized agent of the designated election official for mailing or personal delivery to the designated election official. To be counted, all envelopes containing absentee voter's ballots must be in the hands of the designated election official or an election judge for the local government not later than 7 p.m. on election day.

(2) Upon receipt of an absentee voter's ballot, the designated election official or an election judge shall write or stamp on the envelope containing the ballot the date and hour that the envelope was received and, if the ballot was delivered in person, the name and address of the person delivering the same. The designated election official or election judge shall safely keep and preserve all absentee voter's ballots unopened until the time prescribed for delivery to the judges as provided in section 1-13.5-1008.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 40, § 6, effective February 18.

ANNOTATION

Analysis

I. General Consideration.
II. Casting Absentee Ballots.
III. Duty of Election Official.

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I. GENERAL CONSIDERATION.

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

Statutory requirement that state reimburse counties for costs associated with an increased level of service found in § 29-1-304.5 (1) inapplicable to requirement in subsection (1)(a) of this section that counties must provide drop-off boxes for mail-in ballots at every polling place on election day, notwithstanding that this increase in service may create additional costs to the county. Statute requiring that the costs of conducting an election be a county charge, § 1-5-505 (1), is in irreconcilable conflict with § 29-1-304.5 (1). However, § 1-5-505 (1), which pertains only to election funding, is more specific than § 29-1-304.5 (1), which broadly applies its reimbursement requirement to most existing state programs. Although § 29-1-304.5 (1) was adopted after § 1-5-505 (1), there is no manifest intent that it should prevail in a conflict with the other statute. Rather, the intent of the legislature was to prioritize citizens' access to free and fair elections over convenience or cost savings to counties. Thus, § 1-5-505 (1) should prevail over § 29-1-304.5 (1), making the unfunded mandate requirement inapplicable to the requirement of this section that counties provide drop-off boxes for mail-in ballots at every polling place on election day. Gessler v. Doty, 2012 COA 4, 272 P.3d 1131.

II. CASTING ABSENTEE BALLOTS.

A voter wishing to cast an absentee vote must comply with all the statutory demands, and the power of the board of elections is held within those lines. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Absentee voting is in derogation of the general election law and should be strictly construed. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

For a strict construction of prescribed procedures is necessary to safeguard the exercise of the elective franchise. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

And the general assembly undoubtedly intended that a voter be held to a strict performance of the prescribed absentee voting procedures. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Thus, execution by a voter of the affidavit is a mandatory precedent to the right to so vote, and if not furnished, the ballot should not be counted. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

However, objection to method of casting vote not considered where vote not mentioned in statement of contest. Israel v. Wood, 98 Colo. 495, 56 P.2d 1324 (1936).

III. DUTY OF ELECTION OFFICIAL.

Voter cannot be disenfranchised for clerk's mistake. A voter who has performed every act required of him cannot be disenfranchised because of irregularities or mistakes of the county clerk. Kellogg v. Hickman, 12 Colo. 256, 21 P. 325 (1888); Lehman v. Pettingell, 39 Colo. 258, 89 P. 48 (1907); Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

Election officials are presumed to comply with the law. Bullington v. Grabow, 88 Colo. 561, 298 P. 1059 (1931).

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1-13.5-1007. Absentee voters' voting machines - electronic voting systems.

(1) Any local government using voting machines in a local government election may provide one or more machines in the designated election official's office for the use of qualified applicants for absentee voters' ballots. If such machines are provided, they must be available from twelve days prior to the election until the close of business on the Friday immediately preceding the election. Votes on the machines must be cast and counted in the same manner as votes would be cast and counted on a voting machine in a polling place on election day. The designated election official shall supervise the casting and counting of absentee voters' ballots on the machines. The machines shall remain locked and the tabulation of the votes cast must remain unknown until election day.

(2) Any local government using an electronic voting system may provide such system for the use of qualified applicants for absentee voters' ballots. Such system must be available from twelve days prior to the election until the close of business on the Friday immediately preceding the election. Votes cast using such system must be cast in the same manner as votes would be cast in a polling place on election day. The designated election official shall supervise the casting and counting of absentee voters' ballots using such system.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 41, § 6, effective February 18.

1-13.5-1008. Delivery to judges.

Not later than 8:30 a.m. on the day of any local government election, the designated election official shall deliver to the election judges of one of the polling places of the local government, which polling place shall be selected by the designated election official, all the absentee voters' ballot envelopes received up to that time, in sealed packages. The designated election official shall take a receipt for the packages, together with the list of absentee voters, or, in the designated election official's discretion, the designated election official may elect to deliver the absentee voters' envelopes received from electors and the list of absentee voters to the election judges of the polling place. The designated election official shall continue to deliver any envelopes that are received thereafter during that day up to and including 7 p.m. On the sealed packages must be printed or written, "This package contains . . . (number) absentee voters' ballots." With the envelopes, the designated election official shall deliver to one of the election judges all the books, records, and supplies as are needed for tabulating, recording, and certifying said absentee voters' ballots.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 41, § 6, effective February 18.

1-13.5-1009. Casting and counting absentee voters' ballots.

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If the self-affirmation on the envelope containing an absentee voter's ballot is properly sworn to, one of the election judges shall tear open the voter's identification envelope in the presence of a majority of the judges without defacing the self-affirmation printed thereon or mutilating the enclosed ballot. One of the election judges shall verify the name of the eligible elector and ballot number issued to such elector and carefully remove the stub from the ballot. The ballot must then be cast and counted in the same manner as if the absentee voter had been present in person; except that one of the judges shall deposit the ballot in the ballot box without unfolding it. The absentee vote must be counted and certified separately from the votes of the polling place where it is counted.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 42, § 6, effective February 18.

1-13.5-1010. Challenge of absentee voters' ballots - rejection - record.

(1) The vote of any absentee voter may be challenged in the same manner as other votes are challenged, and the election judges may determine the legality of such ballot. If the challenge is sustained or if the judges determine that the self-affirmation accompanying the absentee voter's ballot is insufficient or that the voter is not an eligible elector, the envelope containing the ballot of the voter shall not be opened, and the judges shall endorse on the back of the envelope the reason for rejection. When it is made to appear to the election judges by sufficient proof that any absentee voter who has marked and forwarded a ballot has died, the envelope containing the ballot of the deceased voter shall not be opened, and the judges shall make proper notation on the back of such envelope. If an absentee voter's envelope contains more than one marked ballot, none of the ballots in that envelope may be counted, and the judges shall note on the envelope the reason that the ballots were not counted. If an absentee voter's envelope does not contain all pages of a ballot, only the marked and returned pages shall be counted. Election judges shall certify in their returns the number of absentee voter's ballots cast and counted and the number of such ballots rejected.

(2) All absentee voters' envelopes, ballot stubs, and absentee voters' ballots rejected by the election judges in accordance with subsection (1) of this section must be returned to the designated election official. All absentee voters' ballots received by the designated election official after 7 p.m. on the day of the election, together with those rejected and returned by the election judges as provided in this section, must remain in the sealed identification envelopes.

(3) If an absentee voter's ballot is not returned or if it is rejected and not counted, the fact shall be noted on the record kept by the designated election official. Such record is open to public inspection under proper regulations.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 42, § 6, effective February 18.

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1-13.5-1011. Emergency absentee voting - definition.

(1) (a) If an eligible elector is confined in a hospital or at his or her place of residence on election day because of conditions arising after the closing day for absentee voters' ballot applications, he or she may request, by a written statement signed by him or her, that the designated election official send him or her an emergency absentee voter's ballot. The designated election official shall deliver the emergency absentee voter's ballot, with the word "emergency" stamped or written on the stubs of the ballot, at his or her office, during the regular hours of business, to any authorized representative of the elector possessing a written statement from the voter's physician, physician assistant authorized under section 12-240-107 (6), advanced practice registered nurse, or nurse practitioner that the voter will be confined in a hospital or his or her place of residence on election day. The authorized representative shall acknowledge receipt of the emergency absentee voter's ballot with his or her signature, name, and address.

(b) For purposes of this subsection (1), "authorized representative" means a person possessing a written statement from the elector containing the elector's signature, name, and address and requesting that the elector's emergency absentee voter's ballot be given to the authorized person as identified by name and address.

(2) A request for an emergency absentee voter's ballot under this section shall be made, and the ballot shall be returned, to the designated election official's office no later than 7 p.m. on election day.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 42, § 6, effective February 18. **L. 2016:** (1)(a) amended, (SB 16-158), ch. 204, p. 720, § 2, effective August 10. **L. 2019:** (1)(a) amended, (HB 19-1172), ch. 136, p. 1642, § 4, effective October 1.

Cross references: For the legislative declaration in SB 16-158, see section 1 of chapter 204, Session Laws of Colorado 2016.

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PART 11
INDEPENDENT MAIL BALLOT ELECTIONS

1-13.5-1101. Independent mail ballot elections.

Any local government may conduct an independent mail ballot election utilizing the procedures in this part 11.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 43, § 6, effective February 18.

1-13.5-1102. Definitions.

As used in this part 11, unless the context otherwise requires:

(1) "Independent mail ballot election" means a mail ballot election that the governing body of a local government determines will not be coordinated by the county clerk and recorder.

(2) "Mail ballot packet" means the packet of information provided by the designated election official to eligible electors in the independent mail ballot election. The packet includes the ballot, instructions for completing the ballot, a secrecy envelope, and a return envelope.

(3) "Publication" means one-time printing in a newspaper of general circulation in the local government or proposed special district if there is such a newspaper, or, if not, in a newspaper in the county in which the local government or proposed special district is or will be located. For a local government with territory in more than one county, if there is no newspaper of general circulation in the local government, "publication" means the one-time printing in a newspaper of general circulation in each county in which the local government is located and in which fifty or more eligible electors of the local government resides.

(4) "Return envelope" means an envelope that is printed with spaces for the name and address of, and a self-affirmation substantially in the form described in section 1-13.5-605 (1) to be signed by, an eligible elector voting in an independent mail ballot election, into which envelope must fit a secrecy envelope. A return envelope must be designed to allow election officials, upon examining the signature, name, and address on the outside of the envelope, to determine whether the enclosed ballot is being submitted by an eligible elector who has not previously voted in that particular election.

(5) "Secrecy envelope" means the envelope or sleeve used for an independent mail ballot election that contains the eligible elector's ballot for the election and that is designed to conceal and maintain the confidentiality of the elector's vote until the counting of votes for that particular election.

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Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 43, § 6, effective February 18. **L. 2016:** (1) amended, (HB 16-1442), ch. 313, p. 1269, § 11, effective August 10.

1-13.5-1103. Independent mail ballot elections - optional - cooperation with county clerk and recorder permitted - exception.

(1) If the governing body of any local government determines that an election shall be by independent mail ballot, the designated election official for the local government shall conduct the election by mail ballot pursuant to this part 11.

(2) Nothing in this part 11 requires that any election be conducted by mail ballot.

(3) Notwithstanding the fact that an independent mail ballot election is an election that is not coordinated by a county clerk and recorder, the designated election official of a local government and the county clerk and recorder may, by agreement, cooperate on any election procedure or notice.

(4) Notwithstanding any provision of this article to the contrary, the designated election official of a local government shall mail a ballot to every eligible elector of the local government who resides within the boundaries of the local government and who is a covered voter, as that term is defined in section 1-8.3-102, for any election conducted under this article.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 44, § 6, effective February 18. **L. 2016:** (4) amended, (HB 16-1442), ch. 313, p. 1269, § 12, effective August 10.

1-13.5-1104. Preelection process - notification of independent mail ballot election - plan required - duties of designated election official.

(1) The designated election official responsible for conducting an election that is to be by independent mail ballot pursuant to this part 11 shall, no later than fifty-five days prior to the election, have on file at the principal office of the local government or designated election official a plan for conducting the independent mail ballot election. The plan is a public record.

(2) The designated election official shall supervise the distributing, handling, and counting of ballots and the survey of returns, and shall take the necessary steps to protect the confidentiality of the ballots cast and the integrity of the election.

(3) No elector information may be delivered to an elector in the form of a sample ballot.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 44, § 6, effective February 18.

1-13.5-1105. Procedures for conducting independent mail ballot election.

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(1) Official ballots must be prepared and all other preelection procedures followed as otherwise provided by law; except that mail ballot packets must be prepared in accordance with this part 11.

(2) (a) Except for coordinated elections conducted pursuant to an intergovernmental agreement as a mail ballot election where the county clerk and recorder is the coordinated election official under the "Uniform Election Code of 1992", articles 1 to 13 of this title, no later than thirty days prior to election day, the county clerk and recorder in which the local government is located shall submit to the designated election official conducting the independent mail ballot election a complete preliminary list of registered electors. For special district independent mail ballot elections, the county clerk and recorder and county assessor of each county in which a special district is located shall certify and submit to the designated election official a property owners list and a list of registered electors residing within the affected district.

(b) Not later than twenty days prior to election day, the county clerk and recorder and, if appropriate, county assessor, required to submit a preliminary list in accordance with paragraph (a) of this subsection (2) shall submit to the designated election official a supplemental list of the names of eligible electors or property owners who registered to vote on or before twenty-two days prior to the election and whose names were not included on the preliminary list.

(c) All registered electors' names and property owners lists provided to a designated election official under this section shall include the last mailing address of each elector.

(d) (I) No later than twenty days before an election, the designated election official, or the coordinated election official if so provided by an intergovernmental agreement, shall provide notice by publication of an independent mail ballot election conducted pursuant to this article, which notice shall state, as applicable for the particular election for which the notice is provided, the information set forth in section 1-13.5-502.

(II) The notice required to be given by this paragraph (d) is in lieu of the notice requirements set forth in section 1-13.5-502.

(3) Subsequent to the preparation of ballots, but prior to the mailing required under subsection (4) of this section, a designated election official shall provide a mail ballot to an eligible elector requesting the ballot at the office designated in the mail ballot plan.

(4) (a) Not sooner than twenty-two days before an election, and no later than fifteen days before an election, the designated election official shall mail to each active registered elector and any electors who are authorized to vote pursuant to section 1-13.5-202 or other applicable law, at the last mailing address appearing in the registration records and in accordance with United States postal service regulations, a mail ballot packet marked "Do not forward. Address correction requested.", or any other similar statement that is in accordance with United States postal service regulations.

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(b) The ballot or ballot label must contain the following warning:

Warning:

Any person who, by use of force or other means, unduly influences an eligible elector to vote in any particular manner or to refrain from voting, or who falsely makes, alters, forges, or counterfeits any mail ballot before or after it has been cast, or who destroys, defaces, mutilates, or tampers with a ballot is subject, upon conviction, to imprisonment, or to a fine, or both.

(c) (I) The return envelope must have printed on it a self-affirmation substantially in the form provided in section 1-13.5-605 (1).

(II) The signing of the self-affirmation on the return envelope constitutes an affirmation by the eligible elector to whom the ballot was provided, under penalty of perjury, that the facts stated in the self-affirmation are true. If the eligible elector is unable to sign, the eligible elector may affirm by making a mark on the self-affirmation, with or without assistance, that is witnessed by another person who signs as witness where indicated on the return envelope.

(III) Repealed.

(d) Not sooner than twenty-two days prior to election day, and until 7 p.m. on election day, mail ballots must be made available at the office designated in the mail ballot plan for eligible electors who are not listed or who are listed as "Inactive" on the county voter registration records or, for special district independent mail ballot elections, not listed on the property owners list or the registration list but who are authorized to vote pursuant to section 1-13.5-202 or other applicable law.

(e) (I) An eligible elector may obtain a replacement ballot if his or her original ballot was destroyed, spoiled, lost, or for any other reason not received by the eligible elector. An eligible elector may obtain a ballot if a mail ballot packet was not sent to the elector because the eligibility of the elector could not be determined at the time the mail ballot packets were mailed. In order to obtain a ballot, the eligible elector must sign a sworn statement specifying the reason for requesting the ballot, which statement must be presented to the designated election official no later than 7 p.m. on election day. The designated election official shall keep a record of each ballot issued in accordance with this paragraph (e) with a list of each ballot obtained pursuant to paragraph (d) of this subsection (4).

(II) A designated election official or election judge shall not transmit a mail ballot packet under this paragraph (e) unless a sworn statement requesting the ballot is received on or before election day. A ballot may be transmitted directly to the eligible elector requesting the ballot at the office designated in the mail ballot plan or may be mailed to the eligible elector at the address provided in the sworn statement. Such ballots may be cast no later than 7 p.m. on election day.

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(5) (a) Upon receipt of a ballot, the eligible elector shall mark the ballot, sign and complete the self-affirmation on the return envelope, and comply with the instructions provided with the ballot.

(b) The eligible elector may return the marked ballot to the designated election official by United States mail or by depositing the ballot at the office of the official or any place identified in the mail ballot plan by the designated election official. The ballot must be returned in the return envelope. If an eligible elector returns the ballot by mail, the elector must provide postage. The ballot must be received at the office identified in the mail ballot plan or an identified depository, which must remain open until 7 p.m. on election day. The depository must be identified by the designated election official and located in a secure place under the supervision of the designated election official, an election judge, or another person named by the designated election official.

(6) Once the ballot is returned, an election judge shall first qualify the submitted ballot by comparing the information on the return envelope with the registration records and property owners list, as applicable, to determine whether the ballot was submitted by an eligible elector who has not previously voted in the election. If the ballot qualifies and is otherwise valid, the election judge shall indicate in the pollbook that the eligible elector cast a ballot and deposit the ballot in an official ballot box.

(7) All deposited ballots shall be counted as provided in this part 11. A mail ballot is valid and shall be counted only if it is returned in the return envelope, the self-affirmation on the return envelope is signed and completed by the eligible elector to whom the ballot was issued, and the information on the return envelope is verified in accordance with subsection (6) of this section. Mail ballots shall be counted in the same manner as provided by section 1-13.5-609 for counting paper ballots or section 1-13.5-708 or 1-13.5-811 for counting electronic ballots. If the election judge or designated election official determines that an eligible elector to whom a replacement ballot has been issued has voted more than once, the first ballot returned by the elector shall be considered the elector's official ballot. Rejected ballots shall be handled in the same manner as provided in section 1-13.5-1010.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 45, § 6, effective February 18. **L. 2016:** (3), (4)(d), (4)(e)(II), and (5)(b) amended, (SB 16-142), ch. 173, p. 589, § 73, effective May 18; (4)(c)(III) repealed, (HB 16-1442), ch. 313, p. 1269, § 13, effective August 10. **L. 2021:** (4)(a) amended, (SB 21-160), ch. 133, p. 538, § 5, effective September 7.

1-13.5-1105.5. Voting by electors at group residential facilities.

For independent mail ballot elections conducted under this part 11, upon the request of any eligible elector of the local government residing in a facility described in section 1-7.5-113 (1),

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the designated election official shall appoint a committee for delivery of mail ballots to, and return of voted mail ballots from, the facility in accordance with section 1-7.5-113.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 48, § 6, effective February 18.

1-13.5-1106. Delivery of misdelivered ballots.

(1) If an elector delivers a ballot, mail ballot, or absentee voter's ballot to the designated election official, polling place, or election judge of another local government, or to the county clerk and recorder, the recipient may accept the ballot and, if accepted, must arrange for its delivery to the proper person by 7 p.m. on election day. The reasonable cost of such delivery must be paid by the local government conducting the election in which the voter intended to cast the ballot.

(2) If the error in delivery of a ballot is discovered too late for delivery by 7 p.m. on election day, the ballot must be mailed to the proper designated election official and maintained as an election record, but not counted.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 48, § 6, effective February 18. **L. 2016:** (1) amended, (HB 16-1442), ch. 313, p. 1269, § 14, effective August 10.

1-13.5-1107. Counting mail ballots.

The election officials at the mail ballot counting place shall receive and prepare mail ballots delivered and turned over to them by the election judges for counting. Counting of the mail ballots may begin fifteen days prior to the election and continue until counting is completed. The election official in charge of the mail ballot counting place shall take all precautions necessary to ensure the secrecy of the counting procedures, and no information concerning the count shall be released by the election officials or watchers until after 7 p.m. on election day.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 48, § 6, effective February 18.

1-13.5-1108. Write-in candidates.

Any write-in candidate is allowed in independent mail ballot elections if the candidate has filed an affidavit of intent with the designated election official as required by law.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 48, § 6, effective February 18.

1-13.5-1109. Challenges.

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Votes cast pursuant to this part 11 may be challenged pursuant to and in accordance with law, including the challenge and rejection of ballot provisions set forth in section 1-13.5-1010. Any independent mail ballot election conducted pursuant to this part 11 will not be invalidated on the grounds that an eligible elector did not receive a ballot so long as the designated election official for the political subdivision conducting the election acted in good faith in complying with this part 11.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 48, § 6, effective February 18.

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PART 12
CHALLENGE OF PERSONS VOTING

1-13.5-1201. No voting unless eligible.

Unless otherwise permitted pursuant to section 1-13.5-605, no person is permitted to vote at any local government election unless his or her name is found on the registration list or property owners list, if applicable, or unless the person's registration or property ownership is confirmed orally as provided by section 1-13.5-605 (3).

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 49, § 6, effective February 18.

1-13.5-1202. Right to vote may be challenged.

(1) When any person whose name appears on the registration list or property owners list applies for a ballot, his or her right to vote at that election may be challenged. If the person applying is not entitled to vote, no ballot shall be delivered to him or her. Any person may also be challenged when he or she offers a ballot for deposit in the ballot box.

(2) It is the duty of any election judge to challenge any person offering to vote who he or she believes is not an eligible elector. In addition, challenges may be made by watchers or any eligible elector of the local government who is present.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 49, § 6, effective February 18.

1-13.5-1203. Challenge to be made by written oath.

Each challenge must be made by written oath, signed by the challenger under penalty of perjury, setting forth the name of the person challenged and the basis for the challenge. The election judges shall deliver all challenges and oaths to the designated election official at the time the other election papers are returned. The designated election official shall deliver all challenges and oaths to the district attorney for investigation and appropriate action as soon as possible.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 49, § 6, effective February 18.

1-13.5-1204. Challenge questions asked.

(1) If a person offering to vote is challenged as unqualified, one of the election judges shall

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tender to him or her the following written oath or affirmation: "You do solemnly swear or affirm that you will fully and truly answer all such questions as are put to you regarding your place of residence and qualifications as an eligible elector at this election."

(2) If the person is challenged as unqualified on the ground that he or she is not a citizen and will not exhibit papers pertaining to naturalization, an election judge shall ask the following question: "Are you a citizen of the United States?"

(3) If the person is challenged as unqualified on the ground that he or she is not a resident of the local government, an election judge shall ask the following questions:

(a) "Have you resided in the local government immediately preceding this election?"

(b) "Have you been absent from the local government immediately preceding this election, and during that time have you maintained a home or domicile elsewhere?"

(c) "If so, when you left, was it for a temporary purpose with the intent of returning, or did you intend to remain away?"

(d) "Did you, while absent, look upon and regard this state as your home?"

(e) "Did you, while absent, vote in any other state or territory?"

(4) If the person is challenged as ineligible because the person is not a property owner or the spouse or civil union partner of a property owner, an election judge shall ask the following questions:

(a) "Are you a property owner or the spouse or civil union partner of a property owner in this political subdivision and therefore eligible to vote?"

(b) "What is the address or, for special district elections where an address is not available, the location of the property that entitles you to vote in this election?"

(5) If the person is challenged as unqualified on the ground that the person is not eighteen years of age, an election judge shall ask the following question: "Are you eighteen years of age or over to the best of your knowledge and belief?"

(6) An election judge shall put all other questions to the person challenged as may be necessary to test the person's qualifications as an eligible elector at the election.

(7) If the person challenged answers satisfactorily all of the questions put to him or her, the person shall sign his or her name on the form of the challenge after the printed questions. The election judges shall indicate in the proper place on the form of challenge whether the challenge was withdrawn and whether the challenged voter refused to answer the questions and left the polling place without voting.

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Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 49, § 6, effective February 18.

1-13.5-1205. Oath of person challenged.

(1) If the challenge is not withdrawn after the person offering to vote has answered the questions asked pursuant to section 1-13.5-1204, one of the election judges shall tender the following oath:

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You do solemnly swear or affirm that you are a citizen of the United States of the age
of eighteen years or over; that you have been a resident of this local government and
have not retained a home or domicile elsewhere, or that you or your spouse or civil
union partner are owners of taxable real or personal property within the local
government; that you are a registered elector of this state; and that you have not
previously voted at this election.
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(2) After the person has taken the oath or affirmation, his or her ballot must be received and the word "sworn" must be written on the pollbook after the person's name.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 50, § 6, effective February 18.

1-13.5-1206. Refusal to answer questions or take oath.

If the challenged person refuses to answer fully any question which is put to him or her as provided in section 1-13.5-1204 or refuses to take the oath or affirmation tendered as provided in section 1-13.5-1205, the election judges shall reject the challenged person's vote.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 51, § 6, effective February 18.

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PART 13
SURVEY OF RETURNS

1-13.5-1301. Survey of returns - canvass board.

(1) At least fifteen days before any election, the designated election official shall appoint at least one member of the governing body of a local government, and at least one eligible elector of the local government who is not a member of that body, to assist the designated election official in the survey of returns. The persons so appointed and the designated election official constitute the canvass board for the election.

(2) To the fullest extent possible, no member of the canvass board nor the member's spouse or civil union partner shall have a direct interest in the election.

(3) If, for any reason, any person appointed as a member of the canvass board refuses, fails, or is unable to serve, that appointed person shall notify the designated election official, who shall appoint another person that possesses the same qualifications as the original appointee as directed under subsection (1) of this section, if available, to the canvass board.

(4) Each canvass board member who is not a member of the governing body shall receive a minimum fee of fifteen dollars for each day of service. The fee shall be set by the designated election official and paid by the local government for which the service is performed.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 51, § 6, effective February 18.

1-13.5-1302. Imperfect returns.

If the canvass board finds that the returns from any polling place do not strictly conform to the requirements of law in the making, certifying, and returning of the returns, the votes cast in that polling place nevertheless must be canvassed and counted if such returns are sufficiently explicit to enable the persons authorized to canvass votes and returns to determine how many votes were cast for each candidate, ballot issue, or ballot question.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 51, § 6, effective February 18.

1-13.5-1303. Corrections.

If, upon proceeding to canvass the votes, it clearly appears to the canvass board that in any statement produced to them certain matters are omitted that should have been inserted or that any mistakes which are merely clerical exist, the canvass board shall send the statement to the

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election judges from whom they were received to have the mistakes corrected. The election judges, when so demanded, shall make such corrections as the facts of the case require, but shall not change or alter any decision made before by them. The canvass board may adjourn from day to day for the purpose of obtaining and receiving the statement.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 51, § 6, effective February 18.

1-13.5-1304. Tie - lots - notice to candidates.

If any two or more candidates receive an equal and highest number of votes for the same office, and if there are not enough offices remaining for all such candidates, the canvass board shall determine by lot the person who shall be elected. Reasonable notice shall be given to such candidates of the time when such election will be so determined.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 52, § 6, effective February 18.

1-13.5-1305. Statement - certificates of election.

(1) No later than the fourteenth day following the election, the canvass board shall make statements from the official abstract of votes that show the names of the candidates, any ballot issue or ballot question, and the number of votes given to each. The canvass board shall certify the statement to be correct and subscribe their names thereto. The canvass board shall then determine which persons have been duly elected by the highest number of votes and shall endorse and subscribe on such statements a certificate of their determination. The designated election official shall also file a copy of the certificate with the division of local government in the department of local affairs.

(2) The designated election official shall make and transmit to each of the persons thereby declared to be elected a certificate of the person's election.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 52, § 6, effective February 18. **L. 2016:** Entire section amended, (HB 16-1442), ch. 313, p. 1269, § 15, effective August 10.

1-13.5-1306. Recount.

(1) The designated election official shall order a recount of the votes cast in any election if it appears, as evidenced by the survey of returns, that the difference between the highest number of votes cast in the election and the next highest number of votes cast in the election is less than or equal to one-half of one percent of the highest number of votes cast in the election. Any recount conducted pursuant to this subsection (1) shall be completed no later than the twenty-eighth day following the election and shall be paid for by the governing body of the local government. The

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designated election official shall give notice of the recount to the governing body, to all candidates and, in the case of a ballot issue or question, to any issue committee that are affected by the result of the election. The notice must be given by any means reasonably expected to notify the affected candidates or issue committee. An affected candidate or issue committee is allowed to be present during and observe the recount.

(2) (a) Whenever a recount of the votes cast in an election is not required pursuant to subsection (1) of this section, any interested party, including an eligible elector or a candidate for office or the issue committee for a ballot issue or question, may submit to the designated election official a written request for a recount at the expense of the interested party making the request. This request shall be filed with the designated election official within seventeen days after the election.

(b) Before conducting the recount, the designated election official shall:

(I) Give notice of the recount in accordance with subsection (1) of this section;

(II) Determine the cost of the recount;

(III) Notify the interested party that requested the recount of such cost; and

(IV) Collect the actual cost of conducting the recount from such interested party.

(c) The interested party that requested the recount shall pay on demand the cost of the recount to the designated election official. The funds paid to the designated election official for the recount must be held and used for payment of all expenses incurred in the recount.

(d) If, after the recount, the result of the election is reversed in favor of the interested party that requested the recount or if the amended election count is such that a recount otherwise would have been required pursuant to subsection (1) of this section, the payment for expenses must be refunded to the interested party who paid them.

(e) Any recount of votes conducted pursuant to this subsection (2) must be completed no later than the twenty-eighth day after canvassing the election.

(f) If any leftover funds remain from the deposit paid under paragraph (c) of this subsection (2), and the recount does not change the result of the election, the designated election official shall return that unused portion of the deposit to the interested party who paid it.

(3) The designated election official is responsible for conducting the recount and shall be assisted by those persons who assisted in preparing the official abstract of votes. If those persons cannot participate in the recount, other persons shall be appointed as provided in section 1-13.5-1301. The designated election official may appoint additional persons qualified to be the election judges who did not serve as judges in the election as assistants in conducting the recount. Persons assisting in the conduct of the recount shall be compensated as provided in

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section 1-13.5-1301 (4).

(4) The designated election official may require the production of any documentary evidence regarding the legality of any vote cast or counted and may correct the survey of returns in accordance with the designated election official's findings based on the evidence presented.

(5) In elections using paper or electronic ballots, the recounts are of the ballots cast and the votes must be tallied on sheets other than those used at the election. In elections using voting machines, the recount is of the votes tabulated on the voting machines, and separate tally sheets must be used for each machine.

(6) After a recount conducted pursuant to this section has been completed, the designated election official shall notify the governing body of the local government conducting the election of the results of the recount, shall make a certificate of election for each candidate who received the highest number of votes for an office for which a recount was conducted, and shall deliver the certificate to such candidate.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 52, § 6, effective February 18.

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PART 14
CONTESTS

1-13.5-1401. Person elected - contest - causes.

(1) The election of any person declared duly elected to any local government office may be contested by any eligible elector of the local government on the following grounds:

(a) The contestee is not eligible for the office to which he or she has been declared elected;

(b) Illegal votes have been received, or legal votes rejected, at the polls in sufficient numbers to change the results;

(c) An error or mistake was made by any of the election judges, the designated election official, or the canvass board in counting or declaring the result of the election, if the error or mistake was sufficient to change the result;

(d) Malconduct, fraud, or corruption occurred on the part of the election judges in any polling place, a canvass board member, or any designated election official or his or her assistant, if the malconduct, fraud, or corruption was sufficient to change the result; or

(e) For any other cause that shows that another candidate was the legally elected person.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 54, § 6, effective February 18.

1-13.5-1402. District judge to preside - bond.

(1) All contested election cases of local government officers shall be tried and determined in the district court of the county in which the local government is located. If the territorial boundaries of a local government overlap wholly or partially with more than one county, the district court of either county has jurisdiction. The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution shall be according to the rules and practices of the district court.

(2) Before the district court is required to take jurisdiction of the contest, the contestor must file with the clerk of the court a bond, with sureties, to be approved by the district judge, running to the contestee and conditioned to pay all costs in case of failure to maintain his or her contest.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 54, § 6, effective February 18.

1-13.5-1403. Filing statement - contents.

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The contestor shall file in the office of the clerk of the district court, within ten days after the expiration of the period within which a recount may be requested pursuant to section 1-13.5-1306, or within ten days after the conclusion of a recount conducted pursuant to section 1-13.5-1306, whichever is later, a written statement of the contestor's intention to contest the election and setting forth the name of the contestor, that the contestor is an eligible elector of the local government, the name of the contestee, the office contested, the time of election, and the particular causes of the contest. The statement must be verified by the affidavit of the contestor that the causes set forth in the statement are true to the best of the affiant's knowledge and belief.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 55, § 6, effective February 18. **L. 2016:** Entire section amended, (HB 16-1442), ch. 313, p. 1270, § 16, effective August 10.

1-13.5-1404. Summons - answer.

(1) If the clerk of the district court receives a statement as set forth in section 1-13.5-1403, the clerk shall issue a summons in the ordinary form, naming the contestor as plaintiff and the contestee as defendant, stating the court in which the action is brought and a brief statement of the causes of contest, as set forth in the contestor's statement. The summons shall be served upon the contestee in the same manner as other summonses are served out of the district court.

(2) The contestee, within ten days after the date of service of such summons, shall make and file an answer to the same with the clerk of the court in which the contestee shall either admit or specifically deny each allegation intended to be controverted by the contestee on the trial of such contest and shall set in that answer any counterstatement that he or she relies upon as entitling the contestee to the office to which he or she has been declared elected.

(3) If the reception of illegal votes or the rejection of legal votes is alleged as the cause of the contest, a list of the persons who so voted or offered to vote must be set forth in the statement of the contestor and must be likewise set forth in the answer of the contestee if any such cause is alleged in his or her answer by way of counterstatement.

(4) If the answer of the contestee contains new matter constituting a counterstatement, the contestor, within ten days after the filing of such answer, shall reply to the same, admitting or specifically denying, under oath, each allegation contained in such counterstatement intended by him or her to be controverted on the trial, and file the same in the office of the clerk of the district court.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 55, § 6, effective February 18. **L. 2016:** (3) amended, (HB 16-1442), ch. 313, p. 1270, § 17, effective August 10.

1-13.5-1405. Trial and appeals.

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Immediately after the joining of issue, the district court shall fix a date for the trial to commence, which date shall not be more than twenty days nor less than ten days after the joining of issue. The trial takes precedence over all other business in the court. The testimony may be oral or by depositions taken before any officer authorized to take depositions. Any depositions taken to be used upon the trial of such contest may be taken upon four days' notice. The district judge shall cause the testimony to be taken in full and filed in the cause. The trial of such causes must be conducted according to the rules and practice of the district court. Such proceedings may be reviewed and finally adjudicated by the supreme court of this state, if application to that court is made by either party and if the supreme court is willing to assume jurisdiction of the case.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 55, § 6, effective February 18.

1-13.5-1406. Recount.

If, upon the trial of any contested election under this article, the statement or counterstatement sets forth an error in canvass sufficient to change the result, the trial judge has the power to conduct a recount of the ballots cast or the votes tabulated on the voting machines in the precinct where the alleged error was made. The court may also require the production of witnesses, documents, records, and other evidence as may have or may contain information regarding the legality of any vote cast or counted for either of the contesting candidates or the correct number of votes cast for either candidate and may correct the canvass in accordance with the evidence presented and its findings.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 56, § 6, effective February 18.

1-13.5-1407. Judgment.

The court shall pronounce judgment whether the contestee or any other person was duly elected. The person so declared elected is entitled to the office upon qualification. If the judgment is against the contestee and he or she has received his or her certificate, the judgment annuls it. If the court finds that no person was duly elected, the judgment will be that the election be set aside and that a vacancy exists.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 56, § 6, effective February 18.

1-13.5-1408. Ballot questions and ballot issues - how contested.

(1) The results of an election on any ballot question or ballot issue may be contested in the manner provided by this part 14. The grounds for such contest are those grounds set forth in section 1-13.5-1401 (1)(b), (1)(c), and (1)(d). The contestee is the appropriate election official.

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In addition to other matters required to be set forth by this part 14, the statement of intention to contest the election must set forth the question contested.

(2) Any contest arising out of a ballot issue or ballot question concerning the order on the ballot or concerning whether the form or content of any ballot title meets the requirements of section 20 of article X of the state constitution must be conducted as provided in section 1-11-203.5.

(3) The result of an election on any ballot issue approving the creation of any debt or other financial obligation may be contested in the manner provided by this part 14. The grounds for such contest are those grounds set forth in sections 1-11-201 (4) and 1-13.5-1401 (1)(b), (1)(c), and (1)(d). The contestee is the local government for which the ballot issue was decided.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 56, § 6, effective February 18.

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PART 15
OTHER JUDICIAL PROCEEDINGS

1-13.5-1501. Controversies.

(1) When any controversy arises between any official charged with any duty or function under this article and any candidate or other person, the district court, upon the filing of a verified petition by any such official or person setting forth in concise form the nature of the controversy and the relief sought, shall issue an order commanding the respondent in the petition to appear before the court and answer under oath to the petition. It is the duty of the court to summarily hear and dispose of any such issues, with a view to obtaining a substantial compliance with this article by the parties to the controversy, and to make and enter orders and judgments and to follow the procedures of the court to enforce all such orders and judgments.

(2) The proceedings may be reviewed and finally adjudicated by the supreme court of this state, if application to that court is made within five days after the termination by the court in which the petition was filed and if the supreme court is willing to assume jurisdiction of the case.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 57, § 6, effective February 18.

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PART 16
ELECTION OFFENSES

1-13.5-1601. Applicability of criminal penalties.

Notwithstanding any provision of law to the contrary, except for parts 2 and 3 of article 13 of this title, election offenses and penalties described under article 13 of this title apply to elections conducted under this article.

Source: L. 2014: Entire article added, (HB 14-1164), ch. 2, p. 57, § 6, effective February 18. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 754, § 6, effective June 6.

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ARTICLE 45
FAIR CAMPAIGN PRACTICES ACT

Editor's note: (1) This article was added in 1974. This article was repealed and reenacted by initiative in 1996, resulting in the addition, relocation, and elimination of sections as well as subject matter. The vote count on the measure at the general election held November 5, 1996, was as follows:

FOR: u:940 928,148

AGAINST: u:940 482,551

(2) For amendments to this article prior to 1996, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated.

Cross references: For public official disclosure law, see part 2 of article 6 of title 24.

Law reviews: For article, "Fair Campaign Practices Act: Killing Trees for Good Government", see 26 Colo. Law. 101 (Sept. 1997). For article, "Public Moneys and Ballot Issues Under the Fair Campaign Practices Act", see 34 Colo. Law. 81 (Sept. 2005). For article, "Campaign Finance Law in Colorado", see 46 Colo. Law. 35 (June 2017).

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1-45-101. Short title.

This article shall be known and may be cited as the "Fair Campaign Practices Act".

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section is similar to former § 1-45-101 as it existed prior to 1996.

1-45-102. Legislative declaration.

The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, establishing campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **Initiated 2012, (Amendment 65):** Entire section amended, L. 2013, p. 3301, effective upon proclamation of the Governor, January 1, 2013.

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Editor's note: (1) This section is similar to former § 1-45-102 as it existed prior to 1996.

(2) This section was amended by initiative in 2012. The vote count on the measure at the general election held November 6, 2012, was as follows:

FOR: :u940 1,276,432

AGAINST: :u1000 988,542

1-45-103. Definitions - repeal.

As used in this article 45, unless the context otherwise requires:

(1) "Appropriate officer" shall have the same meaning as set forth in section 2 (1) of article XXVIII of the state constitution.

(1.3) "Ballot issue" shall have the same meaning as set forth in section 1-1-104 (2.3); except that, for purposes of section 1-45-117, "ballot issue" shall mean both a ballot issue as defined in this subsection (1.3) and a ballot question.

(1.5) "Ballot question" shall have the same meaning as set forth in section 1-1-104 (2.7).

(2) "Candidate" shall have the same meaning as set forth in section 2 (2) of article XXVIII of the state constitution.

(3) "Candidate committee" shall have the same meaning as set forth in section 2 (3) of article XXVIII of the state constitution.

(4) "Candidate committee account" shall mean the account established by a candidate committee with a financial institution pursuant to section 3 (9) of article XXVIII of the state constitution.

(5) "Conduit" shall have the same meaning as set forth in section 2 (4) of article XXVIII of the state constitution.

(6) (a) "Contribution" shall have the same meaning as set forth in section 2 (5) of article XXVIII of the state constitution.

(b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.

(c) "Contribution" also includes:

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(I) Any payment, loan, pledge, gift, advance of money, or guarantee of a loan made to any political organization;

(II) Any payment made to a third party on behalf of and with the knowledge of the political organization; or

(III) The fair market value of any gift or loan of property made to any political organization.

(d) "Contribution" does not include the payment of legal fees to advise a candidate on compliance with campaign laws or regulations or to represent a candidate or candidate committee in any action in which the candidate or committee has been named as a defendant. Such legal services are not undertaken "for the benefit of any candidate committee" or "for the purpose of promoting the candidate's nomination, retention, recall, or election" as those phrases are used in section 2 (5)(a)(II) and (5)(a)(IV) of article XXVIII of the state constitution.

(e) "Contribution" does not include an intervention by the secretary of state, as authorized by section 1-45-111.5 (1.5)(g), in any action brought to enforce the provisions of article XXVIII of the state constitution or this article 45.

(7) "Corporation" means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S., a domestic nonprofit corporation incorporated under and subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of title 7, C.R.S., or any corporation incorporated under and subject to the laws of another state. For purposes of this article, "domestic corporation" shall mean a for-profit or nonprofit corporation incorporated under and subject to the laws of this state, and "nondomestic corporation" shall mean a corporation incorporated under and subject to the laws of another state or foreign country. For purposes of this article, "corporation" includes the parent of a subsidiary corporation or any subsidiaries of the parent, as applicable.

(7.2) "Direct ballot issue or ballot question expenditure" means direct spending in support of or opposition to any single ballot issue or ballot question by a person who does not otherwise meet the requirements of an issue committee. Contributions to an issue committee are not direct ballot issue or ballot question expenditures.

(7.3) (a) "Donation" means:

(I) The payment, loan, pledge, gift, or advance of money, or the guarantee of a loan, made to any person for the purpose of making an independent expenditure;

(II) Any payment made to a third party that relates to, and is made for the benefit of, any person that makes an independent expenditure;

(III) The fair market value of any gift or loan of property that is given to any person for the purpose of making an independent expenditure; or

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(IV) Anything of value given, directly or indirectly, to any person for the purpose of making an independent expenditure.

(b) "Donation" shall not include a transfer by a membership organization of a portion of a member's dues for an independent expenditure sponsored by such membership organization.

(7.5) "Earmark" means a designation, instruction, or encumbrance that directs the transmission and use by the recipient of all or part of a donation to a third party for the purpose of making:

(a) Independent expenditures greater than one thousand dollars to support or oppose a specified candidate;

(b) Electioneering communications greater than one thousand dollars; or

(c) Contributions or expenditures greater than one thousand dollars to support or oppose a specified ballot issue or ballot question.

(8) "Election cycle" shall have the same meaning as set forth in section 2 (6) of article XXVIII of the state constitution.

(9) "Electioneering communication" has the same meaning as set forth in section 2 (7) of article XXVIII of the state constitution. For purposes of the disclosure required by section 1-45-108, "electioneering communication" also includes any communication that satisfies all other requirements set forth in said section 2 (7) of article XXVIII but that is broadcast, printed, mailed, delivered, or distributed between the primary election and the general election.

(10) (a) "Expenditure" has the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.

(b) "Expenditure" does not include legal services paid to defend a candidate or candidate committee against any action brought to enforce the provisions of article XXVIII of the state constitution or this article 45.

(10.5) "Foreign corporation" means:

(a) A parent corporation or the subsidiary of a parent corporation formed under the laws of a foreign country that is functionally equivalent to a domestic corporation;

(b) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a combined ownership interest that exceeds fifty percent;

(c) A parent corporation or the subsidiary of a parent corporation in which one or more foreign persons hold a majority of the positions on the corporation's board of directors; or

(d) A parent corporation or the subsidiary of a parent corporation whose United States-based

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operations, or whose decision-making with respect to political activities, falls under the direction or control of a foreign entity, including the government of a foreign country.

(11) "Independent expenditure" shall have the same meaning as set forth in section 2 (9) of article XXVIII of the state constitution.

(11.5) "Independent expenditure committee" means one or more persons that make an independent expenditure in an aggregate amount in excess of one thousand dollars or that collect in excess of one thousand dollars from one or more persons for the purpose of making an independent expenditure.

(12) (a) "Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.

(b) For purposes of section 2 (10)(a)(I) of article XXVIII of the state constitution, "major purpose" means support of or opposition to a ballot issue or ballot question that is reflected by:

(I) An organization's specifically identified objectives in its organizational documents at the time it is established or as such documents are later amended; or

(II) An organization's demonstrated pattern of conduct based upon it:

(A) and (B) (Deleted by amendment, L. 2022.)

(C) During the combined period of the current calendar year and the preceding two calendar years, making either contributions to one or more statewide Colorado issue committees or direct ballot issue or ballot question expenditures, in either support of or opposition to one or more statewide Colorado ballot issues or ballot questions, that exceeded thirty percent of the total dollar amount of all funds spent by the organization for any purpose and in any location during the entire preceding and current calendar years;

(D) During the combined period of the current calendar year and the preceding two calendar years, making either contributions to a single statewide Colorado issue committee or direct ballot issue or ballot question expenditures, in either support of or opposition to a single statewide Colorado ballot issue or ballot question, that exceeded twenty percent of the total dollar amount of all funds spent by the organization for any purpose and in any location; or

(E) Acting as an issue committee's funding intermediary by making contributions to an issue committee from funds earmarked for the issue committee.

(c) The provisions of paragraph (b) of this subsection (12) are intended to clarify, based on the decision of the Colorado court of appeals in *Independence Institute v. Coffman,* 209 P.3d 1130 (Colo. App. 2008), cert. denied, 558 U.S. 1024, 130 S. Ct. 165, 175 L. Ed. 479 (2009), section 2 (10)(a)(I) of article XXVIII of the state constitution and not to make a substantive change to said section 2 (10)(a)(I).

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(12.5) "Media outlet" means a publication or broadcast medium that transmits news, feature stories, entertainment, or other information to the public through various distribution channels, including, without limitation, newspapers; magazines; radio; and broadcast, cable, or satellite television.

(12.7) "Obligating" means, in connection with a named candidate, agreeing to spend in excess of one thousand dollars for an independent expenditure or to give, pledge, loan, or purchase one or more goods, services, or other things of value that have a fair market value in excess of one thousand dollars as an independent expenditure. "Obligating" shall not require that the total amount in excess of one thousand dollars be finally determined at the time of the agreement to spend moneys for an independent expenditure or to give, pledge, loan, or purchase anything of value.

(13) "Person" shall have the same meaning as set forth in section 2 (11) of article XXVIII of the state constitution.

(14) "Political committee" shall have the same meaning as set forth in section 2 (12) of article XXVIII of the state constitution.

(14.5) "Political organization" means a political organization defined in section 527 (e)(1) of the federal "Internal Revenue Code of 1986", as amended, that is engaged in influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and that is exempt, or intends to seek any exemption, from taxation pursuant to section 527 of the internal revenue code. "Political organization" shall not be construed to have the same meaning as "political organization" as defined in section 1-1-104 (24) for purposes of the "Uniform Election Code of 1992", articles 1 to 13 of this title.

(15) "Political party" shall have the same meaning as set forth in section 2 (13) of article XXVIII of the state constitution.

(15.3) "Regular biennial school election" means the election that is described in section 22-31-104 (1), C.R.S.

(15.5) "Regular biennial school electioneering communication" has the same meaning as "electioneering communication" as defined in section 2 (7) of article XXVIII of the state constitution; except that, for purpose of the definition of regular biennial school electioneering communication only, "candidate" as referenced in section 2 (7)(a)(I) of said article means a candidate in a regular biennial school election and the requirements specified in section 2 (7)(a)(II) mean a communication that is broadcast, printed, mailed, delivered, or distributed within sixty days before a regular biennial school election. Except as otherwise specified in this subsection (15.5), the definition of "regular biennial school electioneering communication" is the same as that of "electioneering communication".

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(15.7) "School district director" means a person serving as a director on the board of education of any school district within the state, including a school district composed of a city and county.

(16) "Small donor committee" shall have the same meaning as set forth in section 2 (14) of article XXVIII of the state constitution.

(16.3) (a) "Small-scale issue committee" means an issue committee that has accepted or made contributions or expenditures in an amount that does not exceed five thousand dollars during an applicable election cycle for the major purpose of supporting or opposing any ballot issue or ballot question.

(b) The following are treated as a single small-scale issue committee:

(I) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single corporation or its subsidiaries;

(II) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by a single labor organization or the affiliated local units it directs; or

(III) All small-scale issue committees that support or oppose a common ballot measure if the committees are established, financed, maintained, or controlled by substantially the same person, group of persons, or other organizations.

(16.4) "Special school election" means any school election provided for by law and held at a time other than the regular biennial school election.

(16.5) "Spending" means funds expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state and includes, without limitation, any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything else of value by any political organization, a contract, promise, or agreement to expend funds made or entered into by any political organization, or any electioneering communication by any political organization.

(17) "Subsidiary" means a business entity having more than half of its stock owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(18) "Unexpended campaign contributions"shall have the same meaning as set forth in section 2 (15) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor,

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January 15, 1997. **L. 98:** (1) added and (8) amended, p. 223, § 1, effective April 10; (1.5) amended and (14) added, p. 954, § 1, effective May 27. **L. 99:** (5) amended, p. 1390, § 12, effective June 4. **L. 2000:** (1.3), (4)(a)(V), and (4.5) added and (4)(a)(III), (10)(b), and (12) amended, pp. 122, 123, §§ 2, 3, effective March 15; (8) amended, p. 1724, § 1, effective June 1. **L. 2002:** (8)(a)(I) amended and (8)(a)(III) added, p. 198, § 1, effective April 3; (1.5) and (2) amended, p. 1576, § 1, effective July 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)). **L. 2003:** Entire section RC&RE, p. 2156, § 1, effective June 3. **L. 2007:** (7) amended, p. 1766, § 1, effective June 1; (6)(c), (14.5), and (16.5) added, pp. 1225, 1224, §§ 2, 1, effective July 1. **L. 2009:** (1.3) and (1.5) added, (HB 09-1153), ch. 174, p. 774, § 1, effective September 1. **L. 2010:** (7) amended and (7.3), (7.5), (10.5), (11.5), (12.5), and (12.7) added, (SB 10-203), ch. 269, p. 1229, § 2, effective May 25; (12) amended, (HB 10-1370), ch. 270, p. 1241, § 4, effective January 1, 2011. **L. 2011:** (12)(c) amended, (HB 11-1303), ch. 264, p. 1148, § 2, effective August 10. **L. 2016:** (16.3) added, (SB 16-186), ch. 269, p. 1113, § 1, effective June 10; (15.3) and (15.5) added, (HB 16-1282), ch. 267, p. 1105, § 1, effective August 10. **L. 2018:** (6)(d) and (6)(e) added and (10) amended, (HB 18-1047), ch. 155, p. 1091, § 1, effective April 23. **L. 2019:** IP and (7.5) amended and (16.3) R&RE, (HB 19-1318), ch. 328, p. 3040, § 1, effective August 2; IP and (9) amended, (SB 19-068), ch. 69, p. 250, § 1, effective August 2. **L. 2022:** (7.2) added and (7.5) and (12)(b)(II) amended (SB 22-237), ch. 400, p. 2851, § 1, effective June 7; (15.7) and (16.4) added, (HB 22-1060), ch. 99, p. 472, § 1, effective July 1.

Editor's note: (1) This section is similar to former § 1-45-103 as it existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) Prior to the recreation and reenactment of this section in 2003, this section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

(3) Prior to the reenactment of subsection (16.3) on August 2, 2019, subsection (16.3)(c) provided for the repeal of subsection (16.3), effective June 30, 2019. (See. L. 2016, p. 1113.)

(4) Section 10 of chapter 99 (HB 22-1060), Session Laws of Colorado 2022, provides that the act changing this section takes effect July 1, 2022, and applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2022, and for any election cycle or calendar year commencing after July 1, 2022.

Cross references: (1) For the legislative declaration in the 2010 act amending subsection (7) and adding subsections (7.3), (7.5), (10.5), (11.5), (12.5), and (12.7), see section 1 of chapter 269, Session Laws of Colorado 2010.

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(2) For the legislative declaration in the 2010 act amending subsection (12), see section 1 of chapter 270, Session Laws of Colorado 2010.

(3) For the legislative declaration in the 2011 act amending subsection (12)(c), see section 1 of chapter 264, Session Laws of Colorado 2011.

ANNOTATION

Annotator's note. Since § 1-45-103 is similar to § 1-45-103 as it existed prior to its repeal in 2002, relevant cases construing that provision and its predecessors have been included in the annotations to this section.

Phrases unconstitutional. The phrase in subsection (7), "which unambiguously refer to any specific public office or candidate for such office, but does not include expenditures made by persons, other than political parties and political committees, in the regular course and scope of their business and political messages sent solely to their members[,]" is unconstitutional under the first amendment. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The phrase in subsection (11), "or which unambiguously refers to such candidate[,]" is unconstitutional under the first amendment. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The court concluded that the unconstitutional phrases were severable and declared subsections (7) and (11) invalid only insofar as they reach beyond that which may constitutionally be regulated. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

It is apparent from the plain language of subsection (2) that a candidate committee may be comprised of one person only and that the candidate acting alone may be a candidate committee. Thus, a candidate committee who acts alone for the purpose of receiving campaign contributions or making campaign expenditures is a candidate committee subject to the disclosure requirements of this article. Therefore, the expenditures made by a candidate from the candidate's personal funds before certification of his or her committee were either contributions to the ultimately certified candidate committee or expenditures by a separate campaign committee composed of the candidate alone. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of Buckley v. Valeo, 424 U.S. 1 (1976), the definition of "contribution" contained in subsection (4) does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

A contribution under § 2(5)(a)(IV) of article XXVIII of the state constitution and as incorporated by reference into subsection (6)(a) of this section requires that: (1) a thing of value (2) be given to a candidate, either directly or indirectly, (3) in order to promote the candidate's nomination, retention, recall, or election. Keim v. Douglas County Sch. Dist., 2017 CO 81, 397 P.3d 377.

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Term "independent expenditure" in subsection (7) permits the regulation of only those expenditures that are used for communications that expressly advocate the election or defeat of a clearly identified candidate. This standard includes the words and phrases listed in Buckley v. Valeo, 424 U.S. 1 (1976), and other substantially similar or synonymous words. This approach remains focused on actual words, as contrasted with images, symbols, or other contextual factors, provides adequate notice in light of due process concerns, and strikes an appropriate balance between trying to preserve the goals of campaign finance reform and protecting political speech. League of Women Voters v. Davidson, 23 P.3d 1266 (Colo. App. 2001).

None of the advertisements of so-called educational committee at issue amounted to "express advocacy" as that term is applied in Buckley and progeny and, therefore, so-called educational committee was not subject to the requirements of the Fair Campaign Practices Act. League of Women Voters v. Davidson, 23 P.3d 1266 (Colo. App. 2001).

The term "issue" in subsection (8) includes an initiative that has gone through the title-setting process, but has not been formally certified for the election ballot. To construe the term to include only measures actually placed on the ballot would frustrate the purposes of the Campaign Reform Act by allowing groups to raise and spend money, without limit and without disclosure to the public, to convince electors to sign or not to sign a particular petition, thus significantly influencing its success or failure. Colo. for Family Values v. Meyer, 936 P.2d 631 (Colo. App. 1997).

Telephone opinion poll was not "electioneering" and thus did not constitute an "electioneering communication" within the meaning of subsection (9) of this section and § 6 of article XXVIII of the state constitution. In giving effect to the intent of the electorate, court gives term "communication" its plain and ordinary meaning. Court relies upon dictionary definitions of "communication" that contemplate imparting a message to, rather than having mere contact with, another party. In reviewing scripts used by telephone opinion pollster, "communication" occurred because "facts, information, thoughts, or opinions" were "imparted, transmitted, interchanged, expressed, or exchanged" by pollster to those it called. Telephone opinion pollster, therefore, communicated information to members of the electorate during its opinion poll. Harwood v. Senate Majority Fund, LLC, 141 P.3d 962 (Colo. App. 2006).

Telephone opinion poll, however, did not satisfy meaning of electioneering. Colorado electorate intended article XXVIII to regulate communication that expresses "electorate advocacy" and tends to "influence the outcome of Colorado elections". This conclusion is reinforced by plain and ordinary meaning of term "electioneering". Court relies upon dictionary definitions suggesting that "electioneering" is defined by such activities as taking an active part in an election campaign, campaigning for one's own election, or trying to sway public opinion especially by the use of propaganda and that "campaigning" means influencing the public to support a particular candidate, ticket, or measure. Here, telephone opinion poll did not seek to influence voters or sway public opinion but instead merely asked neutral questions to collect data and measure public opinion. Accordingly, telephone opinion poll did not constitute an "electioneering communication" under subsection (9) of this section and article XXVIII of the state constitution. Harwood v. Senate Majority Fund, LLC, 141 P.3d 962 (Colo. App. 2006).

The term "issue committee" covers only those issue committees that were formed for the purpose of supporting or opposing a ballot initiative. An association that was formed and operated for purposes other than "accepting contributions or making expenditures to support or oppose any ballot issue or ballot question" does not become an "issue committee" as defined in this section if, at a future point in time, it engages in those activities with regard to a specific ballot issue or ballot question. Common Sense Alliance v. Davidson, 995 P.2d 748 (Colo. 2000).

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A "political committee" is formed when two or more persons associate themselves with the original purpose of making independent expenditures. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

The term "political committee" in subsection (10) includes a for-profit corporation which makes contributions, contributions in kind, or expenditures to or on behalf of state political campaigns out of its ordinary corporate treasury. Therefore, such corporation is required to file a statement of organization, to report its contributions, contributions in kind, and expenditures, and otherwise to comply with any filing and reporting requirements of the Campaign Reform Act of 1974. Colo. Common Cause v. Meyer, 758 P.2d 153 (Colo. 1988) (decided prior to 1988 amendment to subsection (10)).

While the stated purposes for the formation of an organization may be one criterion upon which to determine whether it is a "political committee", such purposes are not conclusive. To so hold would permit regulable conduct to escape regulation merely because the stated purposes were misleading, ambiguous, fraudulent, or all three. In addition, such a holding would exalt form over substance and would almost entirely eviscerate the Fair Campaign Practices Act and make a mockery of legitimate attempts at campaign finance reform. League of Women Voters v. Davidson, 23 P.3d 1266 (Colo. App. 2001).

The use of the disjunctive term "or" in subsection (11) renders the definition of "political message" applicable to messages that "unambiguously refer to a candidate", even if such messages do not also "advocate the election or defeat" of that candidate. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

To qualify as a political message under subsection (11), a message need only: (1) Be delivered by telephone, any print or electronic media, or other written material, and (2) either (a) advocate the election or defeat of any candidate or (b) unambiguously refer to such candidate. Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

Voter guides that unambiguously refer to specific candidates but do not expressly advocate the election or defeat of any candidate constitute "political messages" as defined in subsection (11). Therefore, the funds expended to produce and disseminate the voter guides are subject to regulation as "independent expenditures" as the term is defined in subsection (7). Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174 (10th Cir. 2000).

"Expressly advocating" for purposes of the definition of expenditure in subsection (10) is limited to speech that explicitly exhorts the viewer or reader to vote for or against a candidate in an upcoming election using either the "magic words" described in Buckly v. Valeo, 424 U.S. 1, 44 n.52 (1976), or substantially similar words. The court declined to adopt a functional equivalence test for "express advocacy" that would be difficult to apply and unconstitutionally chill political speech. None of the 17 ads at issue contained any of the magic words or substantially similar synonyms. Accordingly, because none of the ads constituted "expenditures", neither of the two political organizations that distributed the ads were subject to regulation as "political committees". Colo. Ethics v. Senate Majority Fund, LLC, 2012 CO 12, 269 P.3d 1248.

Administrative law judge (ALJ) did not err in concluding that definition of "expenditures" did not apply to metropolitan district boards. Respondents had argued that the metropolitan districts qualified as "persons" that could expend payments on behalf of issue committee supporting ballot issue. Even if the definition of "person" could be stretched to cover political subdivisions of the state such as metropolitan districts, respondents failed to explain how the payments at issue were "made with the prior knowledge and consent of an agent" of the issue committee that was not yet formed in order to bring

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such payments within the definition of "expenditure". Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

ALJ did not err by interpreting "expenditure" to occur when a payment is made and when there is a contractual agreement and the amount is determined. The use of the disjunctive "or" in the definition of "expenditure" indicates that an expenditure is made if either criterion is met after the ballot title is submitted. Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

ALJ erred by failing to determine whether major purpose of nonprofit association engaging in political advocacy was the nomination or election of candidates. Alliance for Colorado's Families v. Gilbert, 172 P.3d 964 (Colo. App. 2007).

ALJ correctly construed the phrase "for the purpose of" in § 2(5)(a)(IV) of article XXVIII of the state constitution in accordance with its plain meaning to indicate "an anticipated result that is intended or desired" and not "with the effect of". Such a construction would improperly conflate the distinct concepts of purpose and effect. Such an interpretation would also lead to unintended consequences far beyond the scope of issues presented in the case. CEW v. City & County of Broomfield, 203 P.3d 623 (Colo. App. 2009).

Since effect of city employees' actions, rather than their intent, is to be examined, court further rejects argument that intent is to be gauged by objective rather than subjective criteria. Inquiry into purpose requires examination of the intent of the person alleged to have made a campaign contribution. ALJ considered evidence concerning the city employees' intent and determined, on the basis of substantial evidence in the record, that organization bringing campaign finance complaint had not met its burden of proving that the employees provided services for the purpose of promoting a campaign even though employees knew information would be helpful to the candidates to whom the information was provided. Organization's interpretation improperly equates knowledge of the possible effects of one's actions with an intent to achieve a particular result. Accordingly, ALJ correctly determined that city's contribution of staff time was not "for the purpose of" promoting a political campaign. CEW v. City & County of Broomfield, 203 P.3d 623 (Colo. App. 2009).

Political committee's spending on legal expenses did not qualify as an "expenditure". The meaning of expenditure under § 2(8)(a) of article XXVIII of the state constitution and subsection (10) of this section is limited to spending for "expressly advocating" the election or defeat of a candidate, and express advocacy is limited further still to advocacy by use of "magic words" or substantially similar synonyms. Money spent for legal expenses is not spent for expressly advocating the election or defeat of a candidate and therefore is not an expenditure. Camp. Integ. Watchdog v. Alliance for Safe, 2018 CO 7, 409 P.3d 357.

Payment by unions of staff salaries for time spent organizing walks to distribute political literature and payments of other costs associated with related political activities did not constitute prohibited expenditures in violation of § 3(4)(a) of article XXVIII of the state constitution. Whether payments made by the union are prohibited as "expenditures" depends upon whether they are exempt from regulation by the membership communication exception in § 2(8)(b)(III) of article XXVIII of the state constitution as payments for "any communication solely to members and their families". The membership communication exception must be construed broadly to reflect the plain language of this constitutional provision and to satisfy the demands of the first amendment. The membership communication exception as construed applies to most of the union's activities in this case. To the extent that the challenged union activities are not embraced by the membership communication exception, the administrative law judge correctly held that person filing campaign finance complaint failed to prove facts demonstrating that an expenditure was made. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

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The membership communication exception found in § 2(8)(b)(III) of article XXVIII of the state constitution must be extended to and embraced within the definition of "contribution". To hold otherwise nullifies the exception. The same conduct may not be protected by the membership communication exception to expenditures, that is, treated as an exempt expenditure, yet, at the same time, be prohibited as a nonexempt contribution. Such a result would be contrary to the intent of the electorate and constitute an unreasonable and disharmonious application of this article. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

Unions' challenged conduct does not meet the pertinent definitions of a contribution under § 2(5)(a)(II) and (5)(a)(IV) of article XXVIII of the state constitution and subsection (6) of this section. Facts may reasonably be viewed in two contradictory ways: One advancing the union's argument that the payment of union staff salaries for organizing political events were paid for the benefit of the unions and their members and thus exempt from regulation; the other that the payments constituted payments made to a third party for the benefit of the candidate or anything of value given indirectly to the candidate and, thus, were prohibited contributions. When the first amendment is at stake, the tie goes to the speaker rather than to censorship and regulation. On the facts of this case, the unions did not make any prohibited contributions in violation of § 3(4)(a) of article XXVIII of the state constitution. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

School district did not make a prohibited contribution to a campaign under § 2(5)(a)(IV) of article XXVIII and § 1-45-117 (1)(a)(I). A research report from a national think tank supportive of a school district's educational reform efforts that the district commissioned and paid for with public funds constitutes a "thing of value" for purposes of the definition of "contribution". The district did not make a prohibited contribution to a campaign, however, when it broadly disseminated an email of the report to county residents. Something of value is not given to a candidate when it is publicly distributed, even if the candidate happens to be among the public to which the thing of value has been made available. Keim v. Douglas County Sch. Dist., 2017 CO 81, 397 P.3d 377.

Uncompensated legal services are not contributions to a political organization under subsection (6)(b). The constitutional definition of "contribution" does not address political organizations, and neither part of the definition in subsection (6) covers legal services donated to political organizations. Subsection (6)(b) does not apply to political organizations and the word "gift" in subsection (6)(c)(I) does not include gifts of services. Coloradans Bet. Fut. v. Camp. Int. Watchdog, 2018 CO 6, 409 P.3d 350.

Payments to a law firm to defend political committee in tort suit are a reportable contribution under § 2(5)(a)(II) of article XXVIII of the state constitution. Because the law firm that defended the political committee and the court of appeals were both third parties in relation to the political committee, the payment of filing fees to the court and of legal fees to the law firm were "payment[s] made to a third party." And the payments were "for the benefit" of the political committee because they furthered the committee's legal defense. Because the payments of the political committee's legal expenses were contributions to the committee under § 2(5)(a)(II), the committee was required to report them as contributions under § 1-45-108 (1)(a)(I). Camp. Integ. Watchdog v. Alliance for Safe, 2018 CO 7, 409 P.3d 357.

Because coordination, as a concept or as a matter of law, is not required to protect the rights of the maker of a contribution under the circumstances of this case, court declines to impose a requirement of coordination on the definition of contribution to satisfy first amendment requirements. While a finding of coordination may be necessary to protect the recipient of an indirect contribution from unwittingly violating this article, that issue is not raised by this case. Colo. Educ. Ass'n v. Rutt, 184 P.3d 65 (Colo. 2008).

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Television advertisements urging voters to oppose incumbent member met the definition of electioneering communications under § 2(7)(a) of article XXVIII of state constitution. Unambiguous reference to "any communication" in definition does not distinguish between express advocacy and advocacy that is not express. Further, subsection (7)(a) is triggered when a communication is made within 30 days before a primary election or 60 days before a general election, without regard to the communication's purpose. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Regular business exception in § 2(7)(b)(III) of article XXVIII of the state constitution is limited to persons whose business is to broadcast, print, publicly display, directly mail, or hand deliver candidate-specific communications within the named candidate's district as a service rather than to influence elections. Wording of exception shows that the phrase "in the regular course and scope of their business" does not apply to political committees. Accordingly, political committee does not come within the regular business exception. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

The definition of political committee in § 2(12) of article XXVIII of the state constitution would be unconstitutional as applied if it did not incorporate the major purpose test. There are two ways to determine an organization's major purpose: (1) examining its central organizational purpose; and (2) comparing the organization's independent spending with overall spending to determine whether the preponderance of expenditures is for express advocacy or contributions to candidates. Campaign Integrity v. Colo. Citizens, 2018 COA 16, 415 P.3d 874.

The statutory major purpose test borrowed from the definition of issue committee in subsection (12)(b) should not be applied to assessing whether an organization is a political committee. Campaign Integrity v. Colo. Citizens, 2018 COA 16, 415 P.3d 874.

Organization was not a political committee because its major purpose, its one central purpose, was not supporting candidates. Records of the organization in a consecutive twelve-month period showed that only a little over one-third of the organization's spending was on political advocacy for candidates. Campaign Integrity v. Colo. Citizens, 2018 COA 16, 415 P.3d 874.

A judicial officer seeking retention is a candidate for purposes of the definition of "candidate" in subsection (2). Further, a judicial retention vote is an election for purposes of the definition of "political committee" in subsection (14). Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

An organization that supports or opposes the retention of a judicial officer is a political committee because it supports or opposes the election of a candidate and because it is recognized as such by § 1-45-109 (1)(a)(I). Organization accepted contributions and made expenditures of over $200 to oppose the retention of three justices of the Colorado supreme court. It is, therefore, a political committee. Organization cannot be both a political committee and issue committee because the two are defined under subsections (10) and (12) of art. XXVIII of the state constitution to be mutually exclusive. Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

The language in § 25 of art. VI of the state constitution stating that "a question shall be placed on the . . . ballot" does not render judicial retention a "ballot question" for purposes of this article. A judicial retention vote is not a "ballot question" because it does not involve a citizen petition or referred measure. Because a judicial retention vote does not meet the definition of a "ballot issue" or "ballot question" contained in subsections (1.3) and (1.5), organization opposing retention of three justices is not an issue committee under subsection (12)(a). Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

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Secretary of state's proposed rule, 8 Colo. Code Regs. 1505-6, § 1.12, intended to fill a gap in subsection (12)(b) of this section by defining "major purpose" in the definition of issue committee, is arbitrary and capricious. The rule imposed a requirement that, in order to determine whether an issue committee has a "major purpose" under the constitutional and statutory definitions, a demonstrated pattern of conduct is established where the organization's annual expenditures in support of or in opposition to ballot issues or ballot questions exceed 30% of the organization's total spending during the same period. The rule is arbitrary and capricious because the 30% threshold is unsupported by competent evidence in the record. Even if there was competent evidence in the record to support a 30% threshold, this threshold would not resolve the ambiguity as to how a "pattern of conduct" must be demonstrated. Thus, the rule's 30% threshold is manifestly contrary to subsection (12)(b)'s use of the phrase "pattern of conduct" in its definition of major purpose. Colo. Ethics Watch v. Gessler, 2013 COA 172M, 363 P.3d 727.

Secretary of state's proposed rule, 8 Colo. Code Regs. 1505-6, § 1.18.2, designed to fill a gap in the constitutional definition of "political committee" in subsection (14) of this section by explaining precisely how the judicially created "major purpose" test limits what groups qualify as political committees, is invalid because the constitutional definition is clear and unambiguous: Political committees are defined by their contributions or expenditures, not by an additional major purpose test. Because the provisions are clear, there is no gap for the secretary to fill, and he does not have the authority to add a "major purpose" requirement, even in an attempt to codify judicial precedent. Colo. Ethics Watch v. Gessler, 2013 COA 172M, 363 P.3d 727.

District court correctly invalidated secretary of state's proposed rules, 8 Colo. Code Regs. 1505-6, §§ 7.2 and 1.10, designed to fill a gap in subsection (14.5) of this section by narrowing the definition of the phrase "political organization" to conform to federal judicial precedent. The secretary's addition in § 7.2 of the rules of a requirement that a section 527 entity must have a major purpose of influencing state elections contradicts the clear and unambiguous language of subsection (14.5) of this section. This section does not look to the purpose of the entity but to the actual activities of the entity. The secretary's addition in § 1.10 of the rules of an "express advocacy" requirement also contradicts the clear and unambiguous language of this section. These rules thus contradict the clear and unambiguous language of this section by improperly eliminating the statutory distinction between a political organization and a political committee. Colo. Ethics Watch v. Gessler, 2013 COA 172M, 363 P.3d 727.

Subsection (6)(b), which concerns all contributions "for which the contributor receives compensation or consideration", applies to payments made to a state political party for vendor tables at the party's state convention. Interpreting subsection (6)(b) as applying only to payments made to candidate committees that have determined the value of the goods and services provided while excluding payments made to political parties would lead to an absurd result. It is illogical that the general assembly intended "contribution" to enable only candidate committees to determine the value of goods and services provided. Campaign Integrity v. Republican Comm., 2017 COA 126, 488 P.3d 284.

Under the plain language of subsection (6)(b), political parties are required to report only that portion of payments for services that exceeds the value of the services rendered. While the state constitution broadly defines a "contribution", the plain language of the statute addresses the determination of the contribution amount when the contributor receives something of value in the transaction. When a contributor pays a political party for a good or service, and the amount paid is greater than its value, only the amount paid in excess of the value is considered a contribution. The general assembly intended to differentiate between those payments for services that equal the value of those goods and services, which are not contributions, and those made in excess, which are. Campaign Integrity v. Republican Comm., 2017 COA 126, 488 P.3d 284.

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Based on the plain meaning of subsection (6)(b) and applying it to political parties, ALJ erred in determining that payments made to state political party for vendor tables at party's state convention were reportable contributions that party did not properly report. The amount of a contribution includes only payments made in excess of the value received by the contributor. Campaign Integrity v. Republican Comm., 2017 COA 126, 488 P.3d 284.

1-45-103.7. Contribution limits - county offices - school district director - treatment of independent expenditure committees - contributions from limited liability companies - voter instructions on spending limits - definitions.

(1) Nothing in article XXVIII of the state constitution or this article shall be construed to prohibit a corporation or labor organization from making a contribution to a political committee.

(1.5) (a) (I) The maximum amount of aggregate contributions that any one person other than a small donor committee or a political party may make to a candidate committee of a candidate for a county office, and that a candidate committee for such candidate may accept from any such person, is one thousand two hundred fifty dollars for the primary election and one thousand two hundred fifty dollars for the general election.

(II) The maximum amount of aggregate contributions that any one small donor committee may make to a candidate committee of a candidate for a county office, and that a candidate committee for such candidate may accept from any one small donor committee, is twelve thousand five hundred dollars for the primary election and twelve thousand five hundred dollars for the general election.

(III) The maximum amount of aggregate contributions that a political party may make to a candidate committee of a candidate for a county office, and that a candidate committee for such candidate may accept from any political party, is twenty-two thousand one hundred twenty-five dollars for the applicable election cycle.

(b) Candidates may accept contributions subject to the aggregate limits specified in subsection (1.5)(a)(I) or (1.5)(a)(II) of this section in accordance with subsection (3) of this section.

(c) Any monetary amount specified in subsection (1.5)(a) of this section must be adjusted in accordance with the adjustments made to other contribution limits as specified in section 3 (13) of article XXVIII of the state constitution.

(d) The requirements of sections 1-45-108 and 1-45-109, as applicable, apply to any contribution made or received that is subject to subsection (1.5)(a) of this section.

(e) For purposes of this subsection (1.5), "county office" means a county commissioner, county clerk and recorder, sheriff, coroner, treasurer, assessor, or surveyor.

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(1.7) (a) The maximum amount of aggregate contributions that a person, excluding a small donor committee, may make to a candidate committee of a candidate for school district director, and that a candidate committee for such candidate may accept from any one person excluding a small donor committee for a regular biennial school election or special school election, as applicable, is two thousand five hundred dollars.

(b) The maximum amount of aggregate contributions that a small donor committee may make to a candidate committee of a candidate for school district director, and that a candidate committee for such candidate may accept from any one small donor for a regular biennial or special school election, as applicable, is twenty-five thousand dollars.

(c) Any monetary amount specified in subsection (1.7)(a) or (1.7)(b) of this section must be adjusted in accordance with the adjustments made to other contribution limits as specified in section 3 (13) of article XXVIII of the state constitution.

(d) The requirements of sections 1-45-108 and 1-45-109, as appropriate, apply to any contribution made or received for any four-year election cycle that is subject to subsection (1.7)(a) or (1.7)(b) of this section.

(2) A political committee may receive and accept moneys contributed to such committee by a corporation or labor organization pursuant to subsection (1) of this section for disbursement to a candidate committee or political party without depositing such moneys in an account separate from the account required to be established for the receipt and acceptance of all contributions by all committees or political parties in accordance with section 3 (9) of article XXVIII of the state constitution.

(2.5) (a) An independent expenditure committee differs from a political committee in that an independent expenditure committee does not coordinate its activities with a candidate or political party.

(b) An independent expenditure committee shall not be treated as a political committee and, therefore, is not subject to the requirements of section 3 (5) of article XXVIII of the state constitution.

(3) A candidate committee established in the name of a candidate affiliated with either a major political party or a minor political party who is running in a primary election may accept:

(a) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a primary election at any time after the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot; or

(b) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a general election at any time prior to the date of the primary election in which

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the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot.

(4) A candidate committee established in the name of a candidate affiliated with either a major political party or a minor political party running in a primary election may expend contributions received and accepted for a general election prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot. A candidate committee established in the name of a candidate affiliated with a major political party or a minor political party running in a primary election who wins the primary election may expend contributions received and accepted for a primary election in the general election.

(4.5) (a) A candidate committee established in the name of a candidate who is a write-in candidate, an unaffiliated candidate, or the candidate of a minor political party who is not running in a primary election may accept from any one person the aggregate contribution limit specified in either section 3 (1) of article XXVIII of the state constitution or subsection (1.5)(a) of this section applicable to the office he or she is seeking at any point during the election cycle in which the candidate in whose name the candidate committee is accepting contributions is on the general election ballot.

(b) A candidate committee established in the name of a candidate who is a write-in candidate, an unaffiliated candidate, or the candidate of a minor political party who is not running in a primary election may expend contributions received and accepted in accordance with paragraph (a) of this subsection (4.5) at any point during the election cycle in which the candidate in whose name the candidate committee is accepting contributions is on the general election ballot.

(5) (a) No limited liability company shall make any contribution to a candidate committee or political party if one or more of the individual members of the limited liability company is:

(I) A corporation;

(II) A labor organization;

(III) A natural person who is not a citizen of the United States;

(IV) A foreign government;

(V) A professional lobbyist, volunteer lobbyist, or the principal of a professional or volunteer lobbyist, and the contribution is prohibited under section 1-45-105.5 (1); or

(VI) Otherwise prohibited by law from making the contribution.

(b) No limited liability company shall make any contribution to a political committee if one or more of the individual members of the limited liability company is:

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(I) An entity formed under and subject to the laws of a foreign country;

(II) A natural person who is not a citizen of the United States; or

(III) A foreign government.

(c) Notwithstanding any other provision of this subsection (5), no limited liability company shall make any contribution to a candidate committee or political party if either the limited liability company has elected to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 or any successor provision or the shares of the limited liability company are publicly traded. A contribution by a limited liability company with a single natural person member that does not elect to be treated as a corporation by the internal revenue service pursuant to 26 CFR 301.7701-3 shall be attributed only to the single natural person member.

(d) (I) Any limited liability company that is authorized to make a contribution shall, in writing, affirm to the candidate committee, political committee, or political party to which it has made a contribution, as applicable, that it is authorized to make a contribution, which affirmation shall also state the names and addresses of all of the individual members of the limited liability company. No candidate committee, political committee, or political party shall accept a contribution from a limited liability company unless the written affirmation satisfying the requirements of this paragraph (d) is provided before the contribution is deposited by the candidate committee, political committee, or political party. The candidate committee, political committee, or political party receiving the contribution shall retain the written affirmation for not less than one year following the date of the end of the election cycle during which the contribution is received.

(II) Any contribution by a limited liability company, and the aggregate amount of contributions from multiple limited liability companies attributed to a single member of any such company under this subparagraph (II), shall be subject to the limits governing such contributions under section 3 of article XXVIII of the state constitution. A limited liability company that makes any contribution to a candidate committee, political committee, or political party shall, at the time it makes the contribution, provide information to the recipient committee or political party as to the amount of the total contribution attributed to each member of the limited liability company. The attribution shall reflect the capital each member of the limited liability company has invested in the company relative to the total amount of capital invested in the company as of the date the company makes the campaign contribution, and for a single member limited liability company, the contribution shall be attributed to that single member. The limited liability company shall then deduct the amount of the contribution attributed to each of its members from the aggregate contribution limit applicable to multiple limited liability companies under this subparagraph (II) for purposes of ensuring that the aggregate amount of contributions from multiple limited liability companies attributed to a single member does not exceed the contribution limits in section 3 of article XXVIII of the state constitution. Nothing in this

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subparagraph (II) shall be construed to restrict a natural person from making a contribution in his or her own name to any committee or political party to the extent authorized by law.

(5.3) An issue committee or small-scale issue committee shall not knowingly accept contributions from:

(a) Any natural person who is not a citizen of the United States;

(b) A foreign government; or

(c) Any foreign corporation that does not have the authority to transact business in this state pursuant to article 115 of title 7 or any successor section.

(5.5) A natural person who is not a citizen of the United States, a foreign government, or a foreign corporation shall not establish, register, or maintain a political committee, small donor committee, political party, issue committee, or small-scale issue committee, or make an electioneering communication or regular biennial school electioneering communication.

(6) No nondomestic corporation may make any contribution under article XXVIII of the state constitution or this article that a domestic corporation is prohibited from making under article XXVIII of the state constitution or this article.

(6.5) Notwithstanding any other provision of law, a candidate committee established in the name of a candidate may expend contributions received and accepted by the committee during any particular election cycle to reimburse the candidate for reasonable and necessary expenses for the care of children or other dependents the candidate incurs directly in connection with the candidate's campaign activities during the election cycle. The candidate committee shall disclose the expenditures in the same manner as any other expenditures the committee is required to disclose under section 1-45-108 (1)(a)(I).

(7) (a) Any person who believes that a violation of subsection (1.5), (1.7), (5), or (6) of this section has occurred may file a written complaint with the secretary of state in accordance with section 1-45-111.7 (2).

(b) Any person who has violated subsection (1.5), (1.7), (5)(a), (5)(b), (5)(c), or (6) of this section is subject to a civil penalty of at least double and up to five times the amount contributed or received in violation of the applicable provision.

(c) Any person who has violated any of the provisions of subsection (5)(d)(I) of this section is subject to a civil penalty of fifty dollars per day for each day that the written affirmation regarding the membership of a limited liability company has not been filed with or retained by the candidate committee, political committee, or political party to which a contribution has been made.

(8) As used in this section, "limited liability company" has the same meaning as "domestic

limited liability company" as defined in section 7-90-102 (15) or "foreign limited liability company" as defined in section 7-90-102 (24).

(9) (a) The voters instruct the Colorado congressional delegation to propose and support, and the Colorado state legislature to ratify, an amendment to the United States Constitution that allows Congress and the states to limit campaign contributions and spending, to ensure that all citizens, regardless of wealth, can express their views to one another and their government on a level playing field.

(b) The provisions of this subsection shall take effect on January 1, 2013, and be applicable thereafter.

(10) For purposes of this section, the terms "unaffiliated", "major political party", and "minor political party" have the same meanings as specified in the "Uniform Election Code of 1992", articles 1 to 13 of this title.

(11) (a) If, within the six months before becoming a candidate for public office, a person actively solicits funds for an independent expenditure committee with the intent of benefiting his or her future candidacy, any expenditure made by that independent expenditure committee in that candidate's race is presumed to be controlled by or coordinated with that candidate and deemed to constitute both a contribution by the maker of the expenditures, and an expenditure by the candidate committee.

(b) If any complaint filed under section 1-45-111.7 for a violation of this subsection (11) fails to state sufficient facts to support the allegations of the complaint, upon a final agency action, the respondent to such a complaint may apply to the state district court for an award of the person's attorneys fees and costs in connection with defending against the complaint if the district court determines that the complaint was frivolous, vexatious, or for the purpose of harassment.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. **L. 2004:** Entire section amended, p. 863, § 1, effective May 21. **L. 2007:** (5), (6), (7), and (8) added, p. 1766, § 2, effective June 1. **L. 2008:** (5)(d)(II) amended, p. 440, § 1, effective April 14. **L. 2010:** (2.5) added and (6) and (8) amended, (SB 10-203), ch. 269, p. 1230, § 3, effective May 25. **Initiated 2012, (Amendment 65):** (9) added, L. 2013, p. 3301, effective upon proclamation of the Governor, January 1, 2013. **L. 2014:** IP(3) and (4) amended and (4.5) and (10) added, (HB 14-1335), ch. 145, p. 494, § 2, effective May 2. **L. 2018:** (2.5) and (8) amended, (HB 18-1047), ch. 155, p. 1092, § 2, effective April 23. **L. 2019:** (7)(a) amended, (SB 19-232), ch. 330, p. 3065, § 2, effective July 1; (1.5) added and (4.5)(a) and (7)(b) amended, (HB 19-1007), ch. 97, p. 356, § 1, effective August 2; (5.3), (5.5), and (11) added, (HB 19-1318), ch. 328, p. 3041, § 2, effective August 2; (6.5) added, (SB 19-229), ch. 354, p. 3260, § 1, effective September 1. **L. 2022:** (1.7) added and (7) amended, (HB 22-22-1060), ch. 99, p. 472, § 2, effective July 1.

Editor's note: (1) Subsection (9) was added by initiative in 2012. The vote count on the measure at

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the general election held November 6, 2012, was as follows:

FOR: :u940 1,276,432

AGAINST: :u1000 988,542

(2) Section 10 of chapter 99 (HB 22-1060), Session Laws of Colorado 2022, provides that the act changing this section takes effect July 1, 2022, and applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2022, and for any election cycle or calendar year commencing after July 1, 2022.

Cross references: (1) For the legislative declaration in the 2010 act adding subsection (2.5) and amending subsections (6) and (8), see section 1 of chapter 269, Session Laws of Colorado 2010.

(2) For the legislative declaration in HB 14-1335, see section 1 of chapter 145, Session Laws of Colorado 2014.

ANNOTATION

The classification in former subsections (3) and (4) (now subsections (3), (4), and (4.5)) violates the right to equal protection for individuals wishing to contribute to write-ins, unaffiliated candidates, and minor-party candidates when each candidate runs unopposed for the nomination. This statute does not set contribution limits based on who has a primary and who does not. It creates different contribution limits for individuals running against one another. It allows Republican and Democratic candidates to collect and spend $400 after the primary. Thus, a Republican or Democratic candidate can obtain $400 from a single contributor and spend all of the money in the general election. For the same general election, a write-in candidate can obtain only $200 from a single contributor. Riddle v. Hickenlooper, 742 F.3d 922 (10th Cir. 2014) (decided prior to 2014 amendment).

Under § 9(2)(a) of article XXVIII of the state constitution, a complaint alleging that a contribution exceeds the applicable limit, either on its own or when aggregated with previous contributions, must be filed within 180 days of that excess contribution. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

To give effect to both the contribution limit in § 3 of article XXVIII and the time limit in § 9(2)(a) of article XXVIII, a complaint may seek relief only as to contributions that, standing alone or aggregated, exceed the limit and are made within the preceding 180-day period, and the relief available under § 10(1) of article XXVIII or subsection (7)(b) of this section is limited to those excess contributions as to which the complaint is timely. Lambert v. Ritter Inaugural Comm., Inc., 218 P.3d 1115 (Colo. App. 2009).

An independent expenditure committee operating without the control or coordination of a political party is able to collect contributions or make independent expenditures -- expenditures not controlled by or coordinated with any candidate -- that are not subject to the source and contribution limits that restrict political parties under § 3(3) of article XXVIII of the state constitution and under this act. Colo. Republican Party v. Williams, 2016 COA 26, 370 P.3d 650.

1-45-104. Contribution limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor,

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January 15, 1997. **L. 98:** (13)(a)(II) amended, p. 632, § 2, effective May 6; (13)(c) amended, p. 950, § 1, effective May 27; (14) added, p. 955, § 2, effective May 27. **L. 99:** IP(2) amended, p. 1391, § 13, effective June 4. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: This section was similar to former § 1-45-111 as it existed prior to 1996.

1-45-105. Voluntary campaign spending limits. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (3) amended, p. 951, § 2, effective May 27. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: This section was similar to former § 1-45-112 as it existed prior to 1996.

1-45-105.3. Contribution limits. (Repealed)

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. **L. 2002:** (4)(a.5) added, p. 1929, § 1, effective June 7. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) The provisions of this section were similar to several former provisions of § 1-45-104 as they existed prior to 2000.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation.

(1) (a) No professional lobbyist, volunteer lobbyist, or principal of a professional lobbyist or volunteer lobbyist shall make or promise to make a contribution to, or solicit or promise to solicit a contribution for:

(I) A member of the general assembly or candidate for the general assembly, when the general assembly is in regular session;

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(II) (A) The governor or a candidate for governor when the general assembly is in regular session or when any measure adopted by the general assembly in a regular session is pending before the governor for approval or disapproval; or

(B) The lieutenant governor, the secretary of state, the state treasurer, the attorney general, or a candidate for any of such offices when the general assembly is in regular session.

(b) As used in this subsection (1):

(I) "Principal" means any person that employs, retains, engages, or uses, with or without compensation, a professional or volunteer lobbyist. One does not become a principal, nor may one be considered a principal, merely by belonging to an organization or owning stock in a corporation that employs a lobbyist.

(II) The terms "professional lobbyist" and "volunteer lobbyist" shall have the meanings ascribed to them in section 24-6-301, C.R.S.

(c) (I) Nothing contained in this subsection (1) shall be construed to prohibit lobbyists and their principals from raising money when the general assembly is in regular session or when regular session legislation is pending before the governor, except as specifically prohibited in paragraph (a) of this subsection (1).

(II) Nothing contained in this subsection (1) shall be construed to prohibit a lobbyist or principal of a lobbyist from participating in a fund-raising event of a political party when the general assembly is in regular session or when regular session legislation is pending before the governor, so long as the purpose of the event is not to raise money for specifically designated members of the general assembly, specifically designated candidates for the general assembly, the governor, or specifically designated candidates for governor.

(III) A payment by a lobbyist or a principal of a lobbyist to a political party to participate in such a fund-raising event shall be reported as a contribution to the political party pursuant to section 1-45-108; except that, if the lobbyist or principal of a lobbyist receives a meal in return for a portion of the payment, only the amount of the payment in excess of the value of the meal shall be considered a contribution to the political party. The political party shall determine the value of the meal received for such payment, which shall approximate the actual value of the meal.

(IV) A gift of a meal described in subparagraph (III) of this paragraph (c) by a lobbyist or a principal of a lobbyist to a candidate elected to any office described in paragraph (a) of this subsection (1) but who has not yet been sworn into such office shall be reported as follows:

(A) The lobbyist shall report the value of the meal in the lobbyist disclosure statement filed pursuant to section 24-6-302, C.R.S.

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(B) The elected candidate who has not yet been sworn into office shall report the value of the meal in the public official disclosure statement filed pursuant to section 24-6-203, C.R.S.

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. **L. 2012:** IP(1)(c)(IV) and (1)(c)(IV)(B) amended, (HB 12-1070), ch. 167, p. 586, § 5, effective August 8.

Editor's note: This section is similar to former § 1-45-104 (13) as it existed prior to 2000.

1-45-106. Unexpended campaign contributions.

(1) (a) (I) Subject to the requirements of section 3 (3)(e) of article XXVIII of the state constitution, unexpended campaign contributions to a candidate committee may be:

(A) Contributed to a political party;

(B) Contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in section 3 of article XXVIII of the state constitution, if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made;

(C) Donated to a charitable organization recognized by the internal revenue service;

(D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.

(II) Except as authorized by section 1-45-103.7 (6.5), in no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.

(III) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in this subsection (1), no later than nine years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

(I) Voter registration;

(II) Political issue education, which includes obtaining information from or providing information to the electorate;

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(III) Postsecondary educational scholarships;

(IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;

(V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

(2) (Deleted by amendment, L. 2000, p. 123, § 4, effective March 15, 2000.)

(3) Unexpended contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

(4) This section shall apply to unexpended campaign contributions transferred from a political committee formed prior to January 15, 1997, to a candidate committee registering after January 15, 1997, pursuant to section 1-45-108.

(5) Notwithstanding any other provision of law, any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election in accordance with the requirements of section 3 (3)(e) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) amended, p. 955, § 3, effective May 27. **L. 2000:** (1)(a) and (2) amended, p. 123, § 4, effective March 15. **L. 2003:** IP(1)(a)(I) amended and (5) added, p. 2157, § 2, effective June 3. **L. 2010:** (1)(a)(I)(B) amended, (SB 10-041), ch. 151, p. 522, § 1, effective July 1. **L. 2019:** (1)(a)(II) amended, (SB 19-229), ch. 354, p. 3260, § 2, effective September 1.

Editor's note: This section is similar to § 1-45-109 as it existed prior to 1996.

ANNOTATION

Subsection (2) is constitutional. The state's interest in preventing avoidance of valid contribution limits by use of funds carried over from prior campaigns is both compelling and served by the restriction set forth in subsection (2). This provision is narrowly tailored to accomplish the state's legitimate interest. Citizens for Responsible Gov't State Political Action Comm. v. Buckley, 60 F. Supp. 2d 1066 (D. Colo. 1999).

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. To accomplish the purpose of subsection (5), it is necessary only that a candidate committee report the amount of unexpended campaign funds on

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hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

Candidate committee permitted to use unexpended contributions to pay elected state senator's legal fees. Although legal fees are not specifically mentioned as permissible expenses under subsection (1)(b)(V), the words "including, but not limited to," indicate that the statute merely illustrates the kinds of expenses that may be regarded as directly related to an elected official's duties. Here, the legal fees may properly be characterized as directly related to official duties of elected state senator. The senator's duties include filing periodic reports with the secretary of state, and the fees were reasonably necessary to demonstrate that senator and his or her committee had properly performed this duty. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

1-45-107. Independent expenditures. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) This section was similar to former § 1-45-110.5 as it existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-107.5. Independent expenditures - restrictions on foreign corporations - registration - disclosure - disclaimer requirements - definitions.

(1) Notwithstanding any other provision of law, no natural person who is not a citizen of the United States, foreign government, or foreign corporation may expend moneys on an independent expenditure in connection with an election in the state, and no independent expenditure committee may knowingly accept a donation from any natural person who is not a citizen of the United States, any foreign government, or any foreign corporation.

(2) In accordance with the decision of the supreme court of Colorado in the case of *In re Interrogatories Propounded by Governor Bill Ritter, Jr., Concerning the Effect of Citizens United v. Federal Election Comm'n, 558 U.S. ___ (2010), on Certain Provisions of Article XXVIII of the Constitution of the State of Colorado,* 227 P.3d 892 (Colo. 2010), notwithstanding

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sections 3 (4)(a) and 6 (2) of article XXVIII of the state constitution, corporations and labor organizations shall not be prohibited from making independent expenditures. All such expenditures shall be disclosed in accordance with the requirements of this article and article XXVIII of the state constitution. For purposes of this article and article XXVIII of the state constitution, any use of the word "person" shall be construed to include, without limitation, any corporation or labor organization.

(3) (a) Any person that accepts a donation that is given for the purpose of making an independent expenditure in excess of one thousand dollars or that makes an independent expenditure in excess of one thousand dollars shall register with the appropriate officer within two business days of the date on which an aggregate amount of donations accepted or expenditures made reaches or exceeds one thousand dollars.

(b) The registration required by paragraph (a) of this subsection (3) shall include a statement listing:

(I) The person's full name, spelling out any acronyms used therein;

(II) A natural person authorized to act as a registered agent;

(III) A street address and telephone number for the principal place of operations; and

(IV) The aggregate ownership interest in the person held by foreign persons calculated as of the time the person registers with the appropriate officer under paragraph (a) of this subsection (3).

(c) If the person identified in subparagraph (I) of paragraph (b) of this subsection (3) is a corporation, a subsidiary may register on behalf of its parent corporation or for other subsidiaries of the parent corporation, and the parent corporation may register on behalf of all of its subsidiaries. In each such case, the registered agent of the person registering shall serve as the registered agent for all such affiliated corporations. Registration of a subsidiary shall include the name of its parent corporation as well as any names under which the subsidiary does business.

(d) If the person identified in subparagraph (I) of paragraph (b) of this subsection (3) is a labor organization, a local labor organization may register on behalf of any affiliated local, national, or international labor organization that will be making independent expenditures, and a national or international labor organization may register on behalf of any affiliated local labor organization that will be making independent expenditures. In each such case, the registered agent of the labor organization that is registering shall serve as the registered agent for each affiliated local, national, or international labor organization.

(4) (a) In addition to any other applicable disclosure requirements specified in this article or in article XXVIII of the state constitution, any person making an independent expenditure in an aggregate amount in excess of one thousand dollars in any one calendar year shall report the

following to the appropriate officer:

(I) The person's full name, or, if the person is a subsidiary of a parent corporation, the full name of the parent corporation, spelling out any acronyms used therein;

(II) All names under which the person does business in the state if such names are different from the name identified pursuant to subparagraph (I) of this paragraph (a);

(III) The address of the home office of the person, or, if the person is a subsidiary of a parent corporation, the home office of the parent corporation; and

(IV) The name and street address in the state of its registered agent.

(b) (I) Any person who expends an aggregate amount in excess of one thousand dollars or more per calendar year for the purpose of making an independent expenditure shall report to the appropriate officer, in accordance with the requirements of this section, the name and address of any person that, for the purpose of making an independent expenditure, donates more than two hundred fifty dollars per year to the person expending one thousand dollars or more on an independent expenditure.

(II) If the person making the donation of two hundred fifty dollars or more is a natural person, the disclosure required by subparagraph (I) of this paragraph (b) shall also include the donor's occupation and employer.

(III) If the person making the donation of two hundred fifty dollars or more is not a natural person, the disclosure required by this paragraph (b) shall also include:

(A) The donor's full name, or, if the donor is a subsidiary of a parent corporation, the full name of the parent corporation, spelling out any acronyms used therein;

(B) All names under which the donor does business in the state if such names are different from the name identified pursuant to subparagraph (I) of this paragraph (b);

(C) The address of the home office of the donor, or, if the donor is a subsidiary of a parent corporation, the home office of the parent corporation; and

(D) The name and street address in the state of the donor's registered agent.

(c) The information required to be disclosed pursuant to paragraph (a) of this subsection (4) must be reported in accordance with the schedule specified in section 1-45-108 (2) for political committees; except that any person making an independent expenditure in excess of one thousand dollars within thirty days before a primary, general, or regular biennial school election shall provide such report within forty-eight hours after obligating moneys for the independent expenditure.

(5) (a) In addition to any other applicable requirements provided by law, and subject to the

provisions of this section, any communication that is broadcast, printed, mailed, delivered; placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed that constitutes an independent expenditure for which the person making the independent expenditure expends in excess of one thousand dollars on the communication shall include in the communication a statement that:

(I) The communication has been "paid for by (full name of the person paying for the communication)"; and

(II) Identifies a natural person who is the registered agent if the person identified in subsection (5)(a)(I) of this section is not a natural person.

(b) In the case of a broadcast or online video or audio communication, the statement required by subsection (5)(a) of this section shall satisfy all applicable requirements promulgated by the federal communications commission for size, duration, and placement.

(c) In the case of a nonbroadcast communication, including an online communication, the secretary of state shall, by rule, establish size and placement requirements for the disclaimer statement. If the size, format, or display requirements of the communication make it impracticable to include a disclaimer statement on the communication, the rules must require that the disclaimer statement be available by means of a direct link from the communication to the web page or application screen containing the statement.

(6) Any person that expends an aggregate amount in excess of one thousand dollars on an independent expenditure in any one calendar year shall deliver written notice to the appropriate officer that shall list with specificity the name of the candidate whom the independent expenditure is intended to support or oppose. Where the independent expenditure is made within thirty days before a primary, general, or regular biennial school election, the notice required by this subsection (6) must be delivered within forty-eight hours after the person obligates moneys for the independent expenditure.

(7) Any person that accepts any donation that is given for the purpose of making an independent expenditure or expends any moneys on an independent expenditure in an aggregate amount in excess of one thousand dollars in any one calendar year shall establish a separate account in a financial institution, and the title of the account shall indicate that it is used for such purposes. All such donations accepted by such person for the making of any such independent expenditures shall only be deposited into the account, and any moneys expended for the making of such independent expenditure shall only be withdrawn from the account. As long as the person uses a separate account for the purposes of this subsection (7), in any complaint relating to the use of the person's account, no discovery may be made of information relating to the identity of the person's members and general donors and any discovery is limited to the sources, amounts, and uses of donations deposited into and expenditures withdrawn from the account.

(8) Any person that expends moneys on an independent expenditure in excess of one

thousand dollars, regardless of the medium of the communication produced by the expenditure, shall disclose to the secretary of state, in accordance with the schedule specified in section 1-45-108 (2) for political committees, any donation in excess of twenty dollars given in that reporting period for the purpose of making an independent expenditure.

(9) Repealed.

(10) Any earmarked donation given for the purpose of making an independent expenditure in excess of one thousand dollars shall be disclosed as a donation from both the original source of the donation and the person transferring the donation.

(11) On reports it files with the appropriate official, an independent expenditure committee that obligates in excess of one thousand dollars for an independent expenditure shall disclose a good faith estimate of the fair market value of the expenditure if the committee does not know the actual amount of the expenditure as of the date that a report is required to be filed with the appropriate official.

(12) All information required to be disclosed to the secretary of state under this section shall be posted on the website of the secretary within two business days after its receipt by the secretary.

(13) Notwithstanding any other provision of this section, any requirement contained in this section that is applicable to a corporation shall also be applicable to a labor organization.

(14) (a) Any covered organization that contributes, donates, or transfers ten thousand dollars or more to any person, earmarked for the purpose of making an independent expenditure or electioneering communication, during any one calendar year, shall provide to the recipient of the contribution, donation, or transfer an affirmation, in writing, that includes the information listed in subsection (14)(d) of this section. After reaching the ten thousand dollar threshold, the covered organization shall provide a new affirmation statement for each qualifying subsequent contribution, donation, or transfer during that calendar year.

(b) Any covered organization that transfers ten thousand dollars or more to any person, earmarked for the purpose of that person making a contribution, donation, or transfer to pay for an independent expenditure or electioneering communication, during any one calendar year, shall provide to the recipient of the transfer an affirmation, in writing, that includes the information listed in subsection (14)(d) of this section. After reaching the ten thousand dollar threshold, the covered organization shall provide a new affirmation statement for each qualifying subsequent transfer during that calendar year.

(c) A person shall not accept a contribution, donation, or transfer as described in subsection (14)(a) or (14)(b) of this section from a covered organization unless the covered organization provides a written affirmation to the recipient satisfying the requirements of subsection (14)(d) of this section. The recipient shall include the written affirmation when reporting the

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independent expenditure or electioneering communication to the appropriate filing officer and shall retain the written affirmation for not less than one year following the date of the end of the election cycle during which the affirmation was received.

(d) The affirmation required by this subsection (14) must include:

(I) The name of the covered organization and its principal place of business;

(II) The amount of the contribution, donation, or transfer and the name of the person who received the contribution, donation, or transfer;

(III) (A) If the covered organization is a for-profit corporation, each beneficial owner's name and current residence or business address and, if a listed beneficial owner exercises control over the entity through another legal entity, such as a corporation, partnership, limited liability company, or trust, each such other legal entity and each such beneficial owner who will use that other entity to exercise control over the entity.

(B) For purposes of this subsection (14)(d)(III), "beneficial owner" means a corporation's officers, directors, and owners of more than five percent of the corporation.

(IV) (A) If the covered organization is not a for-profit corporation but is subject to disclosure under subsection (14)(a) or (14)(b) of this section, a list of any person who transferred five thousand dollars or more to the covered organization and who earmarked that transfer of funds for the purpose of making an independent expenditure or electioneering communication as determined by the earlier of either the preceding twelve-month period that ends on the date of the transmission of the independent expenditure or electioneering communication or that ends on the date of the transfer.

(B) A covered organization is not required to include a natural person's name if disclosure of that person would lead to a reasonable probability of harm, threats, harassment, or reprisals to the person or to individuals affiliated with that person.

(C) A covered organization may only redact a person's name from its report under subsection (14)(d)(IV)(B) of this section if the person has affirmed on a form provided by the secretary of state, under oath, that the person believes there is a reasonable probability that they will be subject to harm, threats, harassment, or reprisal if disclosed. The covered organization shall retain the affirmation for not less than one year and shall produce the affirmation to the secretary of state's office in response to a request for information related to any investigation of a campaign finance violation. The affirmation must remain confidential during the pendency of any investigation and complaint with a hearing officer under section 1-45-117.5. Following a final agency decision finding that the individual whose name was redacted does not meet the requirements of this subsection (14)(d)(IV)(C), including the applicable period for appeal, the affirmation is no longer confidential and is subject to public review.

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(D) If the contribution, donation, or transfer under subsection (14)(a) or (14)(b) of this section is from another covered organization, the covered organization shall provide a list of persons who transferred to that covered organization consistent with subsections (14)(d)(IV)(B) and (14)(d)(IV)(C) of this section.

(V) A covered organization need not include a transfer made for a commercial transaction in the ordinary course of any trade or business conducting by the covered organization.

(VI) A certification by the chief executive officer or person who is the head of the covered organization stating that the contribution, donation, or transfer is not made in cooperation, consultation, or concert with or at the request or suggestion of a candidate, authorized committee, or agent of a candidate, political party, or agent of a political party.

(e) For purposes of this subsection (14), "covered organization" means a corporation, including an entity organized under section 501(c) or 527 of the internal revenue code, a labor organization, or an independent expenditure committee. It does not include a small donor committee, political party committee, or candidate committee.

(f) For purposes of this subsection (14), "transfer", "donate", or "contribute" does not include the provision of funds to a vendor or in payment of a contract for goods or services.

Source: L. 2010: Entire section added, (SB 10-203), ch. 269, p. 1231, § 4, effective May 25. **L. 2016:** (4)(c) and (6) amended, (HB 16-1282), ch. 267, p. 1106, § 2, effective August 10. **L. 2018:** (9) repealed, (HB 18-1047), ch. 155, p. 1092, § 3, effective April 23. **L. 2019:** (1) and (5) amended and (14) added, (HB 19-1318), ch. 328, p. 3042, § 3, effective August 2.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 269, Session Laws of Colorado 2010.

ANNOTATION

An independent expenditure committee operating without the control or coordination of a political party is able to collect contributions or make independent expenditures -- expenditures not controlled by or coordinated with any candidate -- that are not subject to the source and contribution limits that restrict political parties under § 3(3) of article XXVIII of the state constitution and under this act. Colo. Republican Party v. Williams, 2016 COA 26, 370 P.3d 650.

Independent expenditure committee not required to disclose payments made by state political party on its behalf as donations unless they were given for the purpose of making an independent expenditure. The payments were made to satisfy committee's administrative penalties and costs. Thus, payments were not given for the purpose of making an independent expenditure. Campaign Integrity v. Colo. Rep. Party, 2017 COA 32, 395 P.3d 1192.

Nor is the independent expenditure committee required to report the payments as contributions. This section does not require an independent expenditure committee to disclose a

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"contribution". The definition of contribution does not include payments made to or for the benefit of an independent expenditure committee. Campaign Integrity v. Colo. Rep. Party, 2017 COA 32, 395 P.3d 1192.

Nor is the independent expenditure committee required to report the payments as expenditures. An "expenditure" generally means payments "expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question." The payments were not expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question; therefore, they did not satisfy the general definition of expenditure. Campaign Integrity v. Colo. Rep. Party, 2017 COA 32, 395 P.3d 1192.

1-45-108. Disclosure - definitions - repeal.

(1) (a) (I) Subject to subsection (1.5) of this section, all candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.

(II) Subject to subsection (1.5) of this section, in the case of contributions made to a candidate committee, political committee, issue committee, and political party, the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.

(III) Any person who expends one thousand dollars or more per calendar year on electioneering communications or regular biennial school electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. If the person making a contribution of more than two hundred fifty dollars is a natural person, the disclosure required by this section must also include the person's occupation and employer. Electioneering communication reports must include the name of the candidate or candidates unambiguously referred to in the electioneering communication or regular biennial school electioneering communication. In accordance with section 1-45-103 (9), an electioneering communication includes any communication that satisfies all other requirements set forth in section 2 (7) of article XXVIII of the state constitution but that is broadcast, printed, mailed, delivered, or distributed between the primary election and the general election.

(IV) In the case of a limited liability company, the disclosure required by this section shall include, in addition to any other information required to be disclosed, each contribution from the limited liability company regardless of the dollar amount of the contribution.

(V) Any disbursement not otherwise defined as an expenditure may be reported to the

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appropriate officer.

(VI) Any person, after expending five thousand dollars in aggregate in a calendar year on direct ballot issue or ballot question expenditures, shall, for each additional expenditure of one thousand dollars or more, report to the secretary of state in accordance with the disclosure required by this section: The amount of the expenditure, the purpose for which the expenditure was made, the date of the expenditure, name and address of the payee, and the ballot question or ballot issue supported or opposed. Such a report must be filed with the secretary of state no later than forty-eight hours after the direct ballot issue or ballot question expenditure was made.

(b) (Deleted by amendment, L. 2003, p. 2158, § 3, effective June 3, 2003.)

(c) A candidate committee in a special district election is not required to file reports under this section until the committee has received contributions or made expenditures exceeding two hundred dollars in the aggregate during the election cycle.

(d) For purposes of this section, a political party shall be treated as a separate entity at the state, county, district, and local levels.

(e) A candidate's candidate committee may reimburse the candidate for expenditures the candidate has made on behalf of the candidate committee. Any such expenditures may be reimbursed at any time. Notwithstanding any other provision of law, any expenditure reimbursed to the candidate by the candidate's candidate committee within the election cycle during which the expenditure is made shall be treated only as an expenditure and not as a contribution to and an expenditure by the candidate's candidate committee. Notwithstanding the date on which any such expenditure is reimbursed, the expenditure shall be reported at the time it is made in accordance with the requirements of this section.

(1.5) Notwithstanding any other provision of law, in light of the opinion of the United States court of appeals for the tenth circuit in the case of Coalition for Secular Government v. Williams, no. 14-1469 (10th circuit March 2, 2016), that affirmed the order of the federal district court in the case of Coalition for Secular Gov't v. Gessler, case no. 12 CV 1708, the disclosure requirements specified in subsection (1)(a)(I) or (1)(a)(II) of this section and the reporting requirements specified in subsection (3.3) or (6) of this section shall not apply to a small-scale issue committee. A small-scale issue committee shall disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures in accordance with the following alternative requirements:

(a) A small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that does not exceed two hundred dollars is not required to disclose or file reports about the contributions or expenditures it has made or received or otherwise register as an issue committee in connection with accepting or making such contributions or expenditures.

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(b) (I) A small-scale issue committee that accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle of between two hundred dollars and five thousand dollars shall register with the appropriate officer within ten business days of the date on which the aggregate amount of contributions or expenditures exceeds two hundred dollars. The registration required by this subsection (1.5)(b)(I) must include a statement listing:

(A) The committee's full name, spelling out any acronyms used in the name;

(B) The name of a natural person authorized to act as a registered agent of the committee;

(C) A street address for the principal place of business of the committee;

(D) The purpose or nature of interest of the committee; and

(E) The name of the financial institution in which, in a separate account bearing the name of the committee, all contributions received by the committee are deposited.

(II) A small-scale issue committee described in subsection (1.5)(b)(I) of this section is not required to make any disclosure about any contributions or expenditures it has made or received.

(c) (I) At such time as an issue committee that began as a small-scale issue committee accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that exceeds five thousand dollars, the committee shall report to the appropriate officer, for each particular contribution or expenditure accepted or made, the name and address of each person who has made such contribution and the amount of each specific contribution and expenditure accepted or made by the committee.

(II) At such time as any issue committee that began as a small-scale issue committee accepts or makes contributions or expenditures in an aggregate amount during any applicable election cycle that exceeds five thousand dollars, the committee shall make disclosure of any contributions or expenditures it accepts or makes on or after the date on which such aggregate amount exceeds five thousand dollars in compliance with all applicable requirements under this article 45 pertaining to the disclosure by an issue committee of its contributions or expenditures accepted or made.

(III) Within fifteen days of a small-scale issue committee becoming subject to the applicable requirements governing an issue committee under this article 45, the committee through its registered agent shall report this change in the committee's status to the secretary of state.

(2) (a) (I) Except as provided in subsections (2)(a)(V), (2.1), (2.5), (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state must be filed:

(A) Quarterly in off-election years no later than the fifteenth calendar day following the end of the applicable quarter;

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(B) On the first Monday in May and on each Monday every two weeks thereafter before the primary election;

(C) On the first day of each month beginning the sixth full month before the major election; except that no monthly report shall be required on the first day of the month in which the major election is held;

(D) On the first Monday in September and on each Monday every two weeks thereafter before the major election;

(E) Thirty-five days after the major election in election years; and

(F) Fourteen days before and thirty days after a special legislative election held in an off-election year.

(II) Such reports that are required to be filed with the municipal clerk and such reports required to be filed pursuant to section 1-45-109 (1)(a)(II) and (1)(c) must be filed on the twenty-first day and on the Friday before and thirty-five days after the primary election, where applicable, and the major election in election years and annually in off-election years on the first day of the month in which the anniversary of the major election occurs.

(III) For purposes of this section, "election year" means every even-numbered year for political parties and political committees and each year in which the particular candidate committee's candidate, or issue committee's issue, appears on the ballot, including a regular biennial school election; and "major election" means the election that decides an issue committee's issue, the election that elects a person to the public office sought by the candidate committee's candidate, and a regular biennial school election.

(IV) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(V) Any political committee, small donor committee, independent expenditure committee, or political organization that is participating in a regular biennial school election shall file its disclosure reports in accordance with the filing schedule specified in sub-subparagraphs (C) to (E) of subparagraph (I) of this paragraph (a) as of the date the committee or organization, as applicable, makes an expenditure or undertakes spending in connection with that election.

(b) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee or party.

(c) All reports filed with the secretary of state pursuant to this subsection (2) shall be for the reporting periods established pursuant to rules promulgated by the secretary of state in

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accordance with article 4 of title 24, C.R.S.

(d) A candidate committee for a former officeholder or a person not elected to office that has no change in the balance of funds maintained by such committee, receives no contributions, makes no expenditures, and enters into no obligations during a reporting period shall not be required to file a report under this section for such period.

(e) The reporting period for all reports required to be filed with the municipal clerk and such reports required to be filed pursuant to section 1-45-109 (1)(a)(II) and (1)(c) shall close five calendar days prior to the effective date of filing.

(2.1) Except as otherwise provided in subsection (2.2) of this section, in the case of a regular biennial school election or a special school election, a candidate committee for school district director shall file reports that are required to be filed with the secretary of state according to the filing schedule specified in subsections (2)(a)(I)(A), (2)(a)(I)(C), (2)(a)(I)(D), and (2)(a)(I)(E) of this section.

(2.2) In connection with a recall election of a school district director, reports of contributions and expenditures must be filed in accordance with the deadlines that are specified in subsection (6) of this section.

(2.3) Repealed.

(2.5) (a) Except as provided in subsection (2.5)(b) of this section, and in addition to any report required to be filed with the secretary of state or municipal clerk under this section, all candidate committees, issue committees, and political parties must file a report with the secretary of state of any contribution of one thousand dollars or more at any time within thirty days preceding the date of the primary election, general election, regular biennial school election, or special school election, as applicable. This report must be filed with the secretary of state no later than twenty-four hours after the receipt of said contribution.

(b) Notwithstanding the provisions of subsection (2.5)(a) of this section, the following committees need not file the reports described in subsection (2.5)(a) of this section in the following instances:

(I) An issue committee need not report a contribution of one thousand dollars or more preceding a primary election;

(II) A committee for a candidate not on the ballot need not report a contribution of one thousand dollars or more during the off-election year;

(III) A candidate or candidate committee for school board need not report a contribution of one thousand dollars or more during the off-election year; and

(IV) A political party during the off-election year.

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(2.7) Any candidate or candidate committee supporting any candidate, including an incumbent, in a recall election, shall file reports of contributions and expenditures with the appropriate officer fourteen and seven days before the recall election and thirty days after the recall election.

(3) Except as otherwise provided in subsection (3.5) of this section, all candidate committees, political committees, small donor committees, and political parties shall register with the appropriate officer before accepting or making any contributions. Registration shall include a statement listing:

(a) The organization's full name, spelling out any acronyms used therein;

(b) A natural person authorized to act as a registered agent;

(c) A street address and telephone number for the principal place of operations;

(d) All affiliated candidates and committees;

(e) The purpose or nature of interest of the committee or party.

(f) (Deleted by amendment, L. 2010, (SB 10-041), ch. 151, p. 522, § 2, effective July 1, 2010.)

(3.3) Subject to subsections (1.5) and (7) of this section, each issue committee shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question or upon receipt of the notice from the secretary of state pursuant to section 1-40-113 (1)(b). If required to register under the requirements of this subsection (3.3), the registration of the issue committee must include a statement containing the items listed in paragraphs (a) to (e) of subsection (3) of this section in connection with other committees and a political party.

(3.5) Any political committee that has registered with the federal election commission may file with the appropriate officer a copy of the registration filed with the federal election commission and, insofar as such registration contains substantially the same information required by subsection (3) of this section, the political committee shall be considered to have registered with the appropriate officer for purposes of subsection (3) of this section and, therefore, shall be authorized to accept or make contributions as permitted by law. Any political committee that satisfies the requirements of this subsection (3.5) shall be subject to all other legal requirements pertaining to contributions and disclosure that are applicable to political committees.

(4) (Deleted by amendment, L. 2010, (SB 10-041), ch. 151, p. 522, § 2, effective July 1, 2010.)

(5) The registration and reporting requirements of this section shall not apply to that part of

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the organizational structure of a political party which is responsible for only the day-to-day operations of such political party at the national level if copies of the reports required to be filed with the Federal Election Commission pursuant to the "Federal Election Commission Act of 1971", as amended, are filed with the secretary of state and include the information required by this section.

(6) Subject to subsection (1.5) of this section, any issue committee whose purpose is the recall of any elected official shall register with the appropriate officer within ten calendar days of accepting or making contributions or expenditures in excess of two hundred dollars to support or oppose the recall. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

(7) (a) Notwithstanding any other provision of law, and subject to subsection (7)(b) of this section, a matter is considered a ballot issue or a ballot question for the purpose of determining whether an issue committee has been formally established, thereby necessitating compliance with any disclosure and reporting requirements of this article 45 and article XXVIII of the state constitution, at the earliest of the following:

(I) A title for the matter has been designated and fixed in accordance with law and any motion for rehearing has been heard;

(II) The matter has been referred to the voters by the general assembly or the governing body of any political subdivision of the state with authorization to refer matters to the voters;

(III) In the case of a citizen referendum petition, the matter has been submitted for format approval in accordance with law;

(IV) A petition concerning the matter has been circulated and signed by at least one person; except that, where a matter becomes a ballot issue or ballot question upon such signing, any person opposing the matter shall not be considered to be an issue committee for purposes of this article and article XXVIII of the state constitution until one such person knows or has reason to know of the circulation; or

(V) A signed petition has been submitted to the appropriate officer in accordance with law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), where a matter concerns a municipal annexation brought pursuant to article 12 of title 31, C.R.S., the matter shall not be considered to be a ballot issue or ballot question for the purpose of determining whether an issue committee has been formally established, thereby necessitating compliance with any disclosure and reporting requirements of this article and article XXVIII of the state constitution, unless and until the first notice of the annexation election has been published in accordance with the requirements of section 31-12-112 (6), C.R.S.

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(8) (a) Any expenditure or spending on a covered communication that is controlled by or coordinated with a candidate or candidate's agent or a political party is considered both a contribution by the maker of the expenditure or spending, and an expenditure by the candidate committee.

(b) For purposes of this subsection (8), "covered communication" includes:

(I) A communication that expressly advocates for the election or defeat of a candidate;

(II) An electioneering communication as defined in section 2 (7) of article XXVIII of the state constitution and section 1-45-103 (9), or regular biennial electioneering communication as defined in section 1-45-103 (15.5); and

(III) A communication by a political organization that influences or attempts to influence the selection, nomination, election, or appointment of a candidate to public office.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1), (2)(a), and IP(3) amended, p. 223, § 2, effective April 10; (2)(c) added, p. 951, § 3, effective May 27. **L. 99:** (2)(a) amended and (2)(c)(V) and (2)(c)(VI) added, p. 1391, §§ 14, 15, effective June 4. **L. 2000:** (2)(a) and (2)(c) amended and (2)(d), (2.3), and (2.5) added, pp. 124, 125, §§ 5, 6, effective March 15; (1) amended, p. 1725, § 2, effective June 1; (2)(e) added, p. 791, § 2, effective August 2. **L. 2001:** (3)(f) added, p. 808, § 1, effective August 8; (2.3) amended, p. 1111, § 2, effective September 1. **L. 2002:** IP(2)(a)(I) and (6) amended and (2.7) added, p. 198, § 2, effective April 3; (1)(c) added, p. 1640, § 33, effective June 7. **L. 2003:** (1)(a), (1)(b), (2.3)(a), (2.5), IP(3), and (3)(f) amended and (1)(d) added, p. 2158, § 3, effective June 3. **L. 2004:** (1)(e) and (3.5) added and IP(3) amended, p. 864, §§ 2, 3, effective May 21. **L. 2007:** IP(2)(a)(I) amended, p. 2017, § 2, effective June 1; IP(2)(a)(I) and (2)(a)(I)(B) amended, p. 1299, § 2, effective July 1. **L. 2008:** (1)(a)(IV) added, p. 441, § 2, effective April 14. **L. 2009:** (2)(a)(II), (2)(e), and (2.5) amended, (HB 09-1357), ch. 361, p. 1871, § 1, effective July 1; IP(3) and (3)(f) amended and (3.3) and (7) added, (HB 09-1153), ch. 174, p. 774, § 2, effective September 1. **L. 2010:** (1)(a)(III), (3)(f), (3.3), (4), and (6) amended, (SB 10-041), ch. 151, p. 522, § 2, effective July 1; (3.3) amended, (HB 10-1370), ch. 270, p. 1241, § 5, effective January 1, 2011. **L. 2012:** (2)(a)(I)(B) amended, (SB 12-014), ch. 1, p. 1, § 1, effective January 30; (1)(c) amended, (HB 12-1269), ch. 83, p. 274, § 1, effective August 8. **L. 2016:** (1)(a)(I), (1)(a)(II), (3.3), and (6) amended and (1.5) added, (SB 16-186), ch. 269, p. 1114, § 2, effective June 10; (1)(a)(III), IP(2)(a)(I), (2)(a)(III), and (2.5) amended and (2)(a)(V) added, (HB 16-1282), ch. 267, p. 1106, § 3; effective August 10. **L. 2018:** (1)(a)(III), (2.5), IP(7)(a), and (7)(a)(I) amended and (1)(a)(V) added, (HB 18-1047), ch. 155, p. 1093, § 4, effective April 23. **L. 2019:** (1)(a)(III) amended, (SB 19-068), ch. 69, p. 250, § 2, effective August 2; (1.5) R&RE and (8) added, (HB 19-1318), ch. 328, p. 3044, § 4, effective August 2. **L. 2022:** IP(2)(a)(I) and (2.5)(a) amended and (2.1) and (2.2) added, (HB 22-1060), ch. 99, p. 473, § 3, effective July 1; IP(2)(a)(I), (2)(a)(I)(E), (2)(a)(II), (2.5)(b)(II), and (2.5)(b)(III) amended and

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(2.5)(b)(IV) added, (HB 22-1156), ch. 108, p. 495, § 1, effective August 10; (1)(a)(VI) added, (SB 22-237), ch. 400, p. 2852, § 2, effective September 1.

Editor's note: (1) This section is similar to former § 1-45-108 as it existed prior to 1996.

(2) The numbering of this section originated in an initiated measure. As a result of an amendment to this section by House Bill 00-1194, subsections (2)(a)(I) and (2)(a)(II) as they existed prior to March 15, 2000, were renumbered on revision as (2)(a)(III) and (2)(a)(IV).

(3) Subsection (2.3)(b) provided for the repeal of subsection (2.3), effective January 1, 2007. (See L. 2001, p. 1111.)

(4) Amendments to subsection (3.3) by Senate Bill 10-041 and House Bill 10-1370 were harmonized.

(5) Prior to the reenactment of subsection (1.5) on August 2, 2019, subsection (1.5)(d) provided for the repeal of subsection (1.5), effective June 30, 2019. (See. L. 2016, p. 1114.)

(6) Amendments to subsection IP(2)(a)(I) by HB 22-1060 and HB 22-1156 were harmonized.

(7) Section 10 of chapter 99 (HB 22-1060), Session Laws of Colorado 2022, provides that the act changing this section takes effect July 1, 2022, and applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2022, and for any election cycle or calendar year commencing after July 1, 2022.

Cross references: For the legislative declaration in the 2010 act amending subsection (3.3), see section 1 of chapter 270, Session Laws of Colorado 2010.

ANNOTATION

Law reviews. For article, "Campaign Finance and 527 Organizations: Keeping Big Money in Politics", see 34 Colo. Law. 71 (July 2005).

Act is neither unconstitutionally vague nor unconstitutionally overbroad. As to candidate's vagueness argument, court finds that act provides sufficient notice to persons of ordinary intelligence that expenditures, regardless of the source of the funds, must be reported. As to candidate's arguments that act is unconstitutionally overbroad and inhibits basic first amendment freedoms, court finds that, construed to preserve its constitutionality, the act does not inhibit a candidate's expenditures of personal funds so long as those expenditures are made through a candidate committee and reported in accordance with this section. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

The disclosure requirements contained in this section do not violate the right to engage in anonymous speech and association. Disclosure of the contributors to ballot measures may constitutionally be required under the standards specified in Buckley v. Valeo, 424 U.S. 1 (1976). Challengers to disclosure requirements must show a reasonable probability that the compelled disclosure of contributors' names would subject them to threats, harassment, or reprisals from either government officials or private parties. Independence Inst. v. Coffman, 209 P.3d 1130 (Colo. App. 2008), cert. denied, 558 U.S. 1024, 130 S. Ct. 625, 175 L. Ed. 2d 479 (2009).

Registration and disclosure requirements are unconstitutional as applied to ballot-initiative committee. There is virtually no proper governmental interest in imposing disclosure requirements on

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ballot-initiative committees that raise and expend minimal money, and limited interest cannot justify the burden that disclosure requirements impose on such a committee. Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010); Coal. for Secular Gov't v. Williams, 815 F.3d 1267 (10th Cir. 2016).

The financial burden of state regulation on ballot initiative committee member's freedom of association approaches or exceeds the value of their financial contributions to their political effort; and the governmental interest in imposing those regulations is minimal, if not nonexistent, in light of the small size of the contributions. Therefore it is unconstitutional to impose that burden on the committee members. Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010); Coal. for Secular Gov't v. Williams, 815 F.3d 1267 (10th Cir. 2016).

The reporting requirements of subsection (1)(a)(I) are not unconstitutional as applied to a political committee. The United States supreme court has consistently upheld disclosure and reporting requirements for political committees that exist primarily to influence elections. It makes no difference that the contributions were not used to directly influence an election -- any contribution to a political committee that has the major purpose of influencing an election is deemed to be campaign related and thus justifies the burden of disclosure and reporting. Camp. Integ. Watchdog v. Alliance for Safe, 2018 CO 7, 409 P.3d 357.

The $200 contribution and expenditure threshold for issue committees under § 2(10)(a)(II) of article XXVIII and the retrospective reporting requirements for issue committees under subsection (1)(a)(I) of this section were not facially invalidated by the tenth circuit's holding in Sampson v. Buescher, 625 F.3d 1247 (10th Cir. 2010). The secretary of state promulgated 8 Colo. Code Regs. 1505-6, § 4.1 (rule 4.1), in response to Sampson. Because rule 4.1's $5,000 threshold and its retrospective reporting exemption clearly conflict with the still-valid constitutional and statutory provisions, rule 4.1 is unlawful and set aside. The secretary of state exceeded his authority in promulgating the rule. Gessler v. CO Common Cause & Ethics Watch, 2014 CO 44, 327 P.3d 232.

Although in promulgating rule 4.27 (later codified as rule 4.1), the secretary was attempting to clarify the registration and reporting requirements in light of Sampson, Sampson did not facially invalidate any provision of the campaign finance law, and, to the extent Sampson impacts the future application of campaign finance laws on issue committees in a similar factual context, rule 4.27 exceeds the scope of Sampson. Colo. Common Cause v. Gessler, 2012 COA 147, 410 P.3d 451, aff'd, 2014 CO 44, 327 P.3d 232.

Under subsection (1)(a), candidate committees must disclose all expenditures and obligations, even if no contributions are received. Thus, if a candidate runs without a separate committee and finances the campaign from personal funds, the candidate is a candidate committee and must disclose expenditures and obligations as required by subsection (1)(a). Nothing in subsection (1)(a) indicates that expenditures must be reported only if drawn on outside contributions. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

Here, both candidate and the candidate committee made expenditures under the authority of the candidate. Thus, both the candidate and the committee were candidate committees or the candidate was acting through the formed committee. In either instance, the expenditures were subject to the disclosure requirements of subsection (1)(a). Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002).

"Obligations entered into" as used in subsection (1)(a)(I) includes only obligations entered into for making expenditures and does not cover activities by a committee that incur debt. It would be absurd to require reporting of all obligations to spend money regardless of purpose yet require reporting of money actually spent only for a single narrow purpose, express advocacy. Moreover, the Fair Campaign Practices Act ties the meaning of obligation to expenditures when it expressly defines

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"obligating" to mean an agreement to make, or indirect provision of, an independent expenditure. The definition of "obligating" in § 1-45-103 (12.7) indicates that the legislature intended to treat obligations no more broadly than it did actual spending. Camp. Integ. Watchdog v. Alliance for Safe, 2018 CO 7, 409 P.3d 357.

Candidate's disclosure report not required to report unexpended campaign funds at the end of an election cycle as contributions from a political party. It is necessary only that a candidate committee report the amount of unexpended campaign funds on hand at the end of an election cycle. To report money already on hand as a fictional, new contribution from an unidentified political party would artificially inflate the amount of funds reportedly available to a candidate committee and would be confusing to those who read the report. Williams v. Teck, 113 P.3d 1255 (Colo. App. 2005).

Payments to a law firm to defend political committee in a tort suit are a reportable contribution under § 2(5)(a)(II) of article XXVIII of the state constitution. Because the law firm that defended the political committee and the court of appeals were both third parties in relation to the political committee, the payment of filing fees to the court and of legal fees to the law firm were "payment[s] made to a third party". And the payments were "for the benefit" of the political committee because they furthered the committee's legal defense. Because the payments of the political committee's legal expenses were "contributions" to the committee under section 2(5)(a)(II), the committee was required to report them as contributions under subsection (1)(a)(I) of this section. Camp. Integ. Watchdog v. Alliance for Safe, 2018 CO 7, 409 P.3d 357.

Order by administrative law judge (ALJ) assessing penalty against nonprofit association engaging in political advocacy based upon determination by ALJ that association was a political committee is vacated and case remanded. Under controlling precedent, regulation under campaign finance laws should be tied to groups controlled by candidates or which have a "major purpose" of electing candidates. Here, record does not permit a determination of whether major purpose test satisfied as to association. On remand, ALJ instructed to determine whether association's "major purpose" in 2004 was the nomination or election of candidates. Alliance for Colorado's Families v. Gilbert, 172 P.3d 964 (Colo. App. 2007).

ALJ had authority to impose appropriate sanction under § 9(2)(a) of article XXVIII of the state constitution for violation of this section. The appropriate officer may either directly sanction the offending party under § 10(2)(b) of article XXVIII or initiate a complaint under § 9(2)(a). Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

Nowhere in this article or in rules promulgated by secretary of state is the filing requirement conditioned upon posting by or receiving electronic transmissions from the county clerk and recorder. Instead, the requirement to disclose and file reports is unconditionally imposed until a committee is terminated. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

Section 9(2)(a) of article XXVIII of the state constitution authorizes ALJ to render a decision upon a complaint and, if ALJ concludes that a violation has occurred, "such decision shall include any appropriate order, sanction, or relief authorized by this article". Nothing in the article, however, recognizes or grants a defense of "good faith", and an ALJ is not at liberty to engraft any limitation or restriction not specifically provided. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

While § 9(2)(a) of article XXVIII of the state constitution requires ALJ to include in the decision an appropriate order, sanction, or relief as authorized by the terms of this article, ALJ has discretion to impose no section at all if he or she reasonably concludes one would not be appropriate. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

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Adoption of 8 Colo. Code Regs, 1505-6, § 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report was within the rulemaking authority of the secretary of state under § 9(1)(b) of article XXVIII of the state constitution and §§ 1-1-107 (2)(a) and 1-45-111.5 (1). Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

District court properly invalidated secretary of state's proposed rule, 8 Colo. Code Regs. 1505-6, § 18.1.8, that attempted to fill a gap in subsection (2.5) of this section by creating a uniform way to assess "good cause" and levy fines. The rule merely eliminates penalties after a contribution is first disclosed and after election day regardless of a showing of good cause. The rule applies equally to those who intentionally avoid reporting obligations as well as those who do not report due to inadvertence. So, because the rule does not fill a gap, but applies irrespective of whether there is actually good cause to reduce or eliminate penalties, the rule is manifestly contrary to § 10(2)(c) of art. XXVIII of the state constitution, which requires the secretary to set aside or reduce a penalty only upon a showing of good cause. Colo. Ethics Watch v. Gessler, 2013 COA 172M, 363 P.3d 727.

1-45-108.3. Disclaimer statement - committees - electioneering communications - direct ballot issue or ballot question expenditures.

(1) A candidate committee, political committee, issue committee, small donor committee, political organization, political party, or other person making an expenditure in excess of or spending more than one thousand dollars per calendar year on a communication that must be disclosed under article XXVIII of the state constitution or under this article 45 or supports or opposes a ballot issue or ballot question, and that is broadcast, printed, mailed, delivered; placed on a website, streaming media service, or online forum for a fee; or that is otherwise distributed shall include in the communication a disclaimer statement in accordance with subsection (2) of this section.

(2) The disclaimer statement required by subsection (1) of this section must conform to the requirements specified in section 1-45-107.5 (5) for content, size, duration, and placement.

(3) In addition to any other applicable requirements provided by law, any person who expends one thousand dollars or more per calendar year on electioneering communications or regular biennial school electioneering communications shall, in accordance with the requirements specified in section 1-45-107.5 (5), state in the communication the name of the person making the communication. For purposes of this subsection (3), an "electioneering communication" also includes any communication that satisfies all other requirements set forth in section 2 (7) of article XXVIII of the state constitution but that is broadcast, printed, mailed, delivered, or distributed between the primary election and the general election.

(4) Any person who makes a direct ballot issue or ballot question expenditure shall, pursuant to section 1-45-107.5 (5), state their name in any communication that is broadcast, printed, mailed, or delivered; placed on a website, streaming media service, or online forum for a fee; or

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that is otherwise distributed to persons who are eligible to vote on the ballot issue or ballot question and is produced or funded, either in whole or in part, by the person who made the direct ballot issue or ballot question expenditure.

Source: L. 2010: Entire section added, (HB 10-1370), ch. 270, p. 1242, § 6, effective January 1, 2011. **L. 2019:** (3) added, (SB 19-068), ch. 69, p. 251, § 3, effective August 2; entire section amended, (HB 19-1318), ch. 328, p. 3046, § 5, effective August 2. **L. 2022:** (4) added, (SB 22-237), ch. 400, p. 2853, § 3, effective June 7.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 270, Session Laws of Colorado 2010.

1-45-108.5. Political organizations - disclosure.

(1) Any political organization shall report to the appropriate officer in accordance with the requirements of sections 1-45-108 and 1-45-109:

(a) Any contributions it receives, including the name and address of each person who has contributed twenty dollars or more to the political organization in the reporting period, and the occupation and employer of each natural person who has made a contribution of one hundred dollars or more to the political organization; and

(b) Any spending by the political organization that exceeds twenty dollars in any one reporting period.

(2) No political organization shall accept a contribution, or undertake spending, in currency or coin exceeding one hundred dollars.

(3) Nothing in this section shall be construed to:

(a) Require any political organization to make any additional disclosure pursuant to this section to the extent the political organization is already providing disclosure as a committee or political party in a manner that satisfies the requirements of sections 1-45-108 and 1-45-109; or

(b) Authorize the secretary of state to require disclosure of the name of any natural person that is a member of an entity unless the natural person has made a contribution to a political organization in the amount of twenty dollars or more in a reporting period.

Source: L. 2007: Entire section added, p. 1225, § 3, effective July 1.

ANNOTATION

Uncompensated legal services are not contributions to a political organization under §

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1-45-103 (6)(b). The constitutional definition of "contribution" does not address political organizations, and neither part of the definition in § 1-45-103 (6) covers legal services donated to political organizations. Section 1-45-103 (6)(b) does not apply to political organizations and the word "gift" in § 1-45-103 (6)(c)(I) does not include gifts of services. Coloradans Bet. Fut. v. Camp. Int. Watchdog, 2018 CO 6, 409 P.3d 350.

Payment by political organization of court costs did not meet the statutory definition of spending and, therefore, the political organization did not need to report it as such. The funds were not expended influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any state or local public office in the state under the definition of "spending" in § 1-45-103 (16.5). Camp. Int. Watchdog v. Colo. Better Future, 2016 COA 56M, 378 P.3d 852.

1-45-109. Filing - where to file - timeliness.

(1) For the purpose of meeting the filing and reporting requirements of this article 45:

(a) The following shall file with the secretary of state:

(I) Candidates for statewide office, the general assembly, district attorney, district court judge, school district director, or any office representing more than one county; the candidate committees for such candidates; political committees in support of or in opposition to such candidates; issue committees in support of or in opposition to an issue on the ballot in more than one county; small donor committees making contributions to such candidates; and persons expending one thousand dollars or more per calendar year on electioneering communications.

(II) Candidates in special district and school district director elections; the candidate committees of such candidates; political committees in support of or in opposition to such candidates; issue committees supporting or opposing a special district ballot issue; and small donor committees making contributions to such candidates.

(b) Candidates in municipal elections, their candidate committees, any political committee in support of or in opposition to such candidate, an issue committee supporting or opposing a municipal ballot issue, and small donor committees making contributions to such candidates shall file with the municipal clerk.

(c) All other candidates, candidate committees, issue committees, political committees, and small donor committees shall file with the secretary of state.

(2) (a) Reports required to be filed by this article 45 are timely if received by the appropriate officer not later than the close of business on the due date.

(b) A person upon whom a penalty has been imposed for failure to file a statement or other information required to be filed pursuant to section 5, 6, or 7 of article XXVIII of the state constitution or section 1-45-108, this section, or section 1-45-110 by the due date may appeal the penalty by filing a written appeal with the appropriate officer no later than thirty days after the date on which notification of the imposition of the penalty was mailed to the person's last-known

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address. Upon receipt of an appeal pursuant to this paragraph (b), the appropriate officer shall set aside or reduce the penalty upon a showing of good cause.

(3) In addition to any other reporting requirements of this article, every incumbent in public office and every candidate elected to public office is subject to the reporting requirements of section 24-6-203, C.R.S.

(4) (a) All reports required to be filed by this article 45 are public records and are open to inspection by the public during regular business hours. A copy of the report must be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection. When the secretary of state is the appropriate officer, the secretary shall make reports viewable on the secretary of state's official website.

(b) and (c) Repealed.

(5) (a) The secretary of state shall operate and maintain a website so as to allow any person who wishes to review reports filed with the secretary of state's office pursuant to this article electronic read-only access to such reports free of charge.

(b) All reports required to be filed by this article that are electronically filed pursuant to subsection (6) of this section shall be made available immediately on the website.

(c) The website shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to the reporting period, date, name of the person making a contribution or expenditure, candidate, and committee.

(d) At the earliest practicable date, the secretary of state shall develop and implement improvements to the website's design and structure to improve the public's ability to navigate, search, browse, download, and analyze information. Such improvements shall include but need not be limited to:

(I) Enhanced searching and summary reporting, including additional search fields such as zip code, employer, and vendor, the ability to search across multiple committees and all filers, the ability to filter or limit searches, such as by election cycle or candidate, the inclusion of smart-search features such as "name sounds like" or "name contains", and numerical totaling of amounts shown on search results;

(II) Features that facilitate the ability to download raw data and search results in one or more common formats to enable offline sorting and analyzing;

(III) Detailed, technical instructions for users;

(IV) Information to help users determine the scope of candidates' and committees' reports and campaign data available online, including explanations of which types of reports are available, the period covered by the online data, and which specific reports can be viewed for

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each campaign committee; and

(V) Resources that give the public comparative context when viewing campaign finance data, such as compilations of the total amounts of money raised and spent by individual candidates, lists of total amounts raised and spent by all statewide and legislative candidates, and compilations of fundraising and spending across candidates and election cycles.

(e) The secretary of state may promulgate rules necessary for the implementation of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(6) (a) The secretary of state shall establish, operate, and maintain a system that enables electronic filing using the internet of the reports required by this article to be filed with the secretary of state's office. In accordance with the provisions of section 24-21-111 (1), C.R.S., the secretary may require any filing under this section to be made by electronic means as determined by the secretary. The rules for use of the electronic filing system shall be promulgated by the secretary in accordance with article 4 of title 24, C.R.S.

(b) Any person required to file with the secretary of state's office shall use the electronic filing system described in paragraph (a) of this subsection (6) in order to meet the filing requirements of this article, if so required by the secretary in accordance with paragraph (a) of this subsection (6), except insofar as an alternate method of filing may be permitted by the secretary. Where a person uses such electronic filing system to meet the filing requirements of this article, the secretary of state shall acknowledge by electronic means the receipt of such filing.

(7) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(8) (a) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(b) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) and (III) (Deleted by amendment, L. 2009, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1, 2009.)

(c) (I) (Deleted by amendment, L. 2007, p. 1296, § 1, effective July 1, 2007.)

(II) (Deleted by amendment, L. 2009, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1, 2009.)

(9) Subsection (1) of this section shall not be construed to require the secretary of state to review reports electronically filed by persons beyond the duties specified in section 9 of article XXVIII of the state constitution.

(10) to (12) Repealed.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor,

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January 15, 1997. **L. 2000:** (4), (5), and (6) amended, p. 125, § 7, effective March 15. **L. 2001:** (1) amended and (7), (8), and (9) added, p. 808, § 2, effective August 8; (6)(b) amended, p. 1111, § 3, effective September 1. **L. 2002:** (1) and (4)(a) amended, p. 1640, § 34, effective June 7. **L. 2003:** (1) and (7)(b) amended, p. 2159, § 4, effective June 3. **L. 2005:** (9) amended, p. 760, § 7, effective June 1. **L. 2007:** (5), (6), (7), (8), and (9) amended, p. 1296, § 1, effective July 1; (2) amended, p. 1983, § 37, effective August 3. **L. 2009:** (1), (5)(a), (6), (8)(b)(II), (8)(b)(III), (8)(c)(II), and (9) amended and (10) added, (HB 09-1357), ch. 361, p. 1872, § 2, effective July 1. **L. 2010:** (11) added, (SB 10-203), ch. 269, p. 1235, § 5, effective May 25; (4)(b) and (6) amended, (SB 10-041), ch. 151, p. 523, § 3, effective July 1. **L. 2017:** (4)(b) amended and (4)(c) and (12) added, (HB 17-1155), ch. 236, p. 966, § 1, effective August 9. **L. 2018:** IP(1), (1)(a)(I), (2)(a), (4)(a), (4)(b), and (4)(c)(I) amended, (HB 18-1047), ch. 155, p. 1094, § 5, effective April 23. **L. 2019:** (4)(b), (4)(c), (11), and (12) repealed, (SB 19-232), ch. 330, p. 3065, § 3, effective July 1. **L. 2022:** (1)(a)(II) amended, (HB 22-1060), ch. 99, p. 474, § 4, effective July 1.

Editor's note: (1) This section is similar to former § 1-45-104 as it existed prior to 1996.

(2) Subsection (10)(e) provided for the repeal of subsection (10), effective January 1, 2011. (See L. 2009, p. 1872.)

(3) Section 10 of chapter 99 (HB 22-1060), Session Laws of Colorado 2022, provides that the act changing this section takes effect July 1, 2022, and applies to the portion of any election cycle or for the portion of the calendar year remaining after July 1, 2022, and for any election cycle or calendar year commencing after July 1, 2022.

Cross references: For the legislative declaration in the 2010 act adding subsection (11), see section 1 of chapter 269, Session Laws of Colorado 2010.

ANNOTATION

Administrative law judge (ALJ) correctly dismissed appellants' agency appeal under § 10 (2)(b)(I) of article XXVIII of the state constitution for lack of subject matter jurisdiction. No question that appellants were required to file reports with secretary of state under subsection (1) of this section once appellant-candidate became a candidate for the general assembly. This does not mean, however, appellants acquired right to appeal penalty to secretary of state. Report at issue was filed not in connection with appellant-candidate's candidacy for the general assembly but solely in connection with position as a county commissioner. Thus, ALJ correctly determined that, for purposes of report and penalty at issue, appellants were persons required to file appeal with county clerk and recorder, not with secretary of state. Sullivan v. Bucknam, 140 P.3d 330 (Colo. App. 2006).

Although appellants could have been required to file a report with the secretary of state in certain circumstances, those circumstances were not present in instant case. Appellants do not qualify as persons required to file with secretary of state under § 10 (2)(b)(I) of article XXVIII of the state constitution for purposes of underlying action merely because they could have been required to so file in other circumstances. Sullivan v. Bucknam, 140 P.3d 330 (Colo. App. 2006).

Nowhere in this article or in rules promulgated by secretary of state is the filing requirement

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conditioned upon posting by or receiving electronic transmissions from the county clerk and recorder. Instead, the requirement to disclose and file reports is unconditionally imposed until a committee is terminated. Patterson Recall Comm., Inc. v. Patterson, 209 P.3d 1210 (Colo. App. 2009).

ALJ had jurisdiction to impose penalty for violation of Rule 9.3 and did not err by imposing a $1,000 penalty on political committee. Section (2)(a) of article XXVIII of the state constitution grants an ALJ authority to conduct hearings on alleged violations of the article and the "Fair Campaign Practices Act" and to impose penalties if a violation has occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under subsection (2)(a) of this section, sanctions can be imposed for violations of this section. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

An organization that supports or opposes the retention of a judicial officer is a political committee because it supports or opposes the election of a candidate and because it is recognized as such by subsection (1)(a)(I). Organization accepted contributions and made expenditures of over $200 to oppose the retention of three justices of the Colorado supreme court. It is, therefore, a political committee. Organization cannot be both a political committee and issue committee because the two are defined under subsections (10) and (12) of art. XXVIII of the state constitution to be mutually exclusive. Colo. Ethics Watch v. Clear the Bench, 2012 COA 42, 277 P.3d 931.

1-45-110. Candidate affidavit - disclosure statement.

(1) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the appropriate officer within ten days, that the candidate is familiar with the provisions of this article; except that an individual who is a candidate in a special legislative election that filed a candidate affidavit for the preceding general election shall not be required to comply with the provisions of this section, and except that a candidate in a special district election shall file the candidate affidavit or, alternatively, a copy of the candidate's self-nomination and acceptance form or letter submitted in accordance with section 1-13.5-303, if such form or letter contains a statement that the candidate is familiar with the provisions of this article, no later than the date established for certification of the special district's ballot pursuant to section 1-5-203 (3)(a). A candidate in a municipal election may comply with this section by filing a candidate affidavit pursuant to section 31-10-302 (6), C.R.S., if such affidavit contains a statement that the candidate is familiar with the provisions of this article.

(2) (a) Except as provided in paragraph (b) of this subsection, each candidate for the general assembly, governor, lieutenant governor, attorney general, state treasurer, secretary of state, state board of education, regent of the University of Colorado, and district attorney shall file a statement disclosing the information required by section 24-6-202 (2) with the appropriate officer, on a form approved by the secretary of state, within ten days of filing the affidavit required by subsection (1) of this section.

(b) No candidate listed in paragraph (a) of this subsection shall be required to file another disclosure statement if the candidate had already filed such a statement less than ninety days prior to filing the affidavit required by subsection (1) of this section.

(2.5) A candidate seeking reelection does not have to file another disclosure statement

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required by subsection (2)(a) of this section if the incumbent has filed the annual report required by section 24-6-202 (2).

(3) If any person fails to file the affidavit or the disclosure statement required by subsection (2) of this section, the designated election official certifying the ballot in accordance with section 1-5-203 (3)(a) shall send a notice to the person by certified mail, return receipt requested, to the person's mailing address. The notice must state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of the receipt of the notice. If the person fails to file the appropriate document within that time frame, the designated election official shall disqualify the candidate.

(4) Any disclosure statement required by subsection (2) of this section shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(5) If a person is defeated as a candidate or withdraws from the candidacy, that person shall not be required to comply with the provisions of this section after the withdrawal or defeat.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 99:** (1) amended, p. 1392, § 16, effective June 4. **L. 2002:** (1) amended, p. 1641, § 35, effective June 7. **L. 2010:** (3) amended, (SB 10-041), ch. 151, p. 524, § 4, effective July 1. **L. 2014:** (1) amended, (HB 14-1164), ch. 2, p. 74, § 44, effective February 18. **L. 2018:** (3) amended, (HB 18-1047), ch. 155, p. 1095, § 6, effective April 23. **L. 2022:** (2.5) added, (HB 22-1156), ch. 108, p. 496, § 2, effective August 10.

Editor's note: This section is similar to former § 1-45-105 as it existed prior to 1996.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

1-45-111. Duties of the secretary of state - enforcement. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (1)(a.5) added and (1)(b) and (2) amended, p. 126, § 8, effective March 15; (2)(d) added, p. 1725, § 3, effective June 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) This section was similar to former §§ 1-45-113 and 1-45-114 as they existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December

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20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3597.

1-45-111.5. Duties of the secretary of state - enforcement - sanctions - definitions.

(1) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of this article.

(1.5) (a) Any person who believes that a violation of article XXVIII of the state constitution, the secretary of state's rules concerning campaign and political finance, or this article 45 has occurred may file a written complaint with the secretary of state in accordance with section 1-45-111.7.

(b) Any person who commits a violation of either the secretary of state's rules concerning campaign and political finance or this article that is not specifically listed in article XXVIII of the state constitution shall be subject to any of the sanctions specified in section 10 of article XXVIII of the state constitution or in this section.

(c) In addition to any other penalty authorized by article XXVIII of the state constitution or this article 45, a hearing officer may impose a civil penalty of fifty dollars per day for each day that a report, statement, or other document required to be filed under this article 45 that is not specifically listed in article XXVIII of the state constitution is not filed by the close of business on the day due. Any person who fails to file three or more successive committee registration reports or reports concerning contributions, expenditures, or donations in accordance with the requirements of section 1-45-107.5 shall be subject to a civil penalty of up to five hundred dollars for each day that a report, statement, or other document required to be filed by an independent expenditure committee is not filed by the close of business on the day due. Any person who knowingly and intentionally fails to file three or more reports due under section 1-45-107.5 shall be subject to a civil penalty of up to one thousand dollars per day for each day that the report, statement, or other document is not filed by the close of business on the day due. Imposition of any penalty under this subsection (1.5)(c) shall be subject to all applicable requirements specified in section 10 of article XXVIII of the state constitution governing the imposition of penalties.

(d) In connection with a complaint brought to enforce any requirement of article XXVIII of the state constitution or this article 45, a hearing officer may order disclosure of the source and amount of any undisclosed donations or expenditures.

(e) In connection with any action brought to enforce any provision of article XXVIII of the state constitution or this article 45, the membership lists of a membership organization, a labor

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organization or, in the case of a publicly held corporation, a list of the shareholders of the corporation, shall not be disclosed by means of discovery or by any other manner.

(f) Any person who is fined up to one thousand dollars per day for a knowing and intentional failure to file under paragraph (c) of this subsection (1.5) shall, if the person has shareholders or members, notify such shareholders or members of the penalty and the adjudicated violations on its publicly accessible website in a prominent manner for not less than one hundred eighty days after the final adjudication. A copy of this notice, with the website address used, shall be filed with the secretary of state and shall be a public record.

(g) The secretary of state has, as a matter of right, the right to intervene in any action pending before the office of administrative courts or the court of appeals that is brought to enforce the provisions of article XXVIII of the state constitution or this article.

(2) A party in any action brought to enforce the provisions of article XXVIII of the state constitution or of this article 45 is entitled to the recovery of the party's reasonable attorney fees and costs from any attorney or party who has brought or defended the action, either in whole or in part, upon a determination by the hearing officer that the action, or any part thereof, lacked substantial justification or that the action, or any part thereof, was commenced for delay or harassment or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including abuses of discovery procedures available under the Colorado rules of civil procedure. Notwithstanding any other provision of this subsection (2), no attorney fees may be awarded under this subsection (2) unless the court or hearing officer, as applicable, has first considered and issued written findings regarding the provisions of section 13-17-102 (5) and (6). Either party in an action in which the hearing officer awarded attorney fees and costs may apply to a district court to convert an award of attorney fees and costs into a district court judgment. Promptly upon the conversion of the award of attorney fees and costs into a district court judgment, the clerk of the district court shall mail notice of the filing of the judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed. For purposes of this subsection (2), "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(3) Upon a determination by the hearing officer that an issue committee failed to file a report required pursuant to section 1-45-108, the hearing officer shall direct the issue committee to file any such report within ten days containing all required disclosure of any previously unreported contributions or expenditures and may, in addition to any other penalty, impose a penalty not to exceed twenty dollars for each contribution received and expenditure made by the issue committee that was not timely reported.

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(4) (a) Upon failure of a witness or party to comply with an administrative subpoena issued in relation to an alleged campaign finance violation pursuant to article XXVIII of the state constitution or this article, the party that requested the administrative subpoena or the issuing agency may petition the district court ex parte with a copy of the petition sent to the subpoenaed witness or party and the administrative law judge by regular mail, for an order directing the witness or party to comply with the administrative subpoena.

(b) If the petition required by paragraph (a) of this subsection (4) shows to the district court's satisfaction that the administrative subpoena was properly served pursuant to rule 4 of the Colorado rules of civil procedure, the district court shall order the subpoenaed witness or party to appear before the district court and show cause why the witness or party should not be ordered to comply with the administrative subpoena. A copy of the petition and the court order shall be served, pursuant to rule 5 of the Colorado rules of civil procedure, on the witness or party at least fifteen days before the date designated for the witness or party to appear before the district court.

(c) At a show cause hearing ordered by the district court pursuant to paragraph (b) of this subsection (4), the court shall review the administrative subpoena and any evidence presented by the parties to determine compliance with the Colorado rules of civil procedure. The subpoenaed witness or party shall bear the burden of showing good cause as to why he or she should not be ordered to comply with the administrative subpoena.

(d) If the court determines that the subpoenaed witness or party is required to comply with the administrative subpoena:

(I) The district court shall order compliance forthwith and may impose remedial and punitive fines, including attorneys' fees and costs, for the witness's or party's failure to comply with the administrative subpoena; and

(II) The hearing officer shall schedule a hearing on the complaint to occur on a day after the occurrence of the required deposition and such other discovery as may be warranted due to such deposition.

(e) If the subpoenaed witness or party fails to appear at the show cause hearing, the district court may issue a bench warrant for the arrest of the subpoenaed witness or party and may impose other sanctions pursuant to the Colorado rules of civil procedure.

(5) Repealed.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. **L. 2005:** (2) amended, p. 852, § 4, effective June 1. **L. 2008:** (1.5) added and (2) amended, p. 349, § 1, effective April 10. **L. 2010:** (1.5)(c), (1.5)(d), (1.5)(e), and (1.5)(f) added, (SB 10-203), ch. 269, p. 1236, § 6, effective May 25; (3) added, (HB 10-1370), ch. 270, p. 1242, § 7, effective January 1, 2011. **L. 2011:** (4) added, (HB 11-1117), ch. 35, p. 97, § 1, effective March 21. **L. 2016:** (5) added, (SB

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16-106), ch. 290, p. 1175, § 1, effective August 10. **L. 2018:** (1.5)(a) and (2) amended and (1.5)(g) added, (HB 18-1047), ch. 155, p. 1095, § 7, effective April 23. **L. 2019:** (1.5)(a) to (1.5)(e), (2), (3), and (4)(d)(II) amended and (5) repealed, (SB 19-232), ch. 330, p. 3066, § 4, effective July 1.

Editor's note: In *Holland v. Williams*, 457 F. Supp. 3d 979 (D. Colo. 2018), the United States District Court for the District of Colorado held that the enforcement provisions in article XXVIII, section 9(2)(a), of the state constitution and subsection (1.5)(a) of this section are facially unconstitutional under the first and fourteenth amendments to the United States Constitution.

Cross references: (1) For the legislative declaration in the 2010 act adding subsections (1.5)(c), (1.5)(d), (1.5)(e), and (1.5)(f), see section 1 of chapter 269, Session Laws of Colorado 2010.

(2) For the legislative declaration in the 2010 act adding subsection (3), see section 1 of chapter 270, Session Laws of Colorado 2010.

ANNOTATION

Subsection (1.5)(a) of this section and § 9(2)(a) of article XXVIII are facially unconstitutional under the first and fourteenth amendments to the federal constitution. These enforcement provisions regulate core political speech and are content-based; therefore, they are subject to strict scrutiny. The provisions are not narrowly tailored to advance the state's interest in enforcing its campaign finance laws. Holland v. Williams, 457 F. Supp. 3d 979 (D. Colo. 2018).

Nor do the enforcement provisions satisfy the balancing test. The provisions diminish first amendment speech and are not reasonable because they allow any person to enforce them. Holland v. Williams, 457 F. Supp. 3d 979 (D. Colo. 2018).

District court did not abuse its discretion by entering preliminary injunction against secretary of state enjoining implementation of administrative rule defining "member" for purposes of constitutional provisions governing small donor committees. Proposed rule would force labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns. Plaintiffs demonstrated reasonable probability of success on the merits in challenging secretary's authority to enact proposed rule. Secretary's "definition" of term "member" in proposed rule is much more than an effort to define term. It can be read effectively to add, modify, and conflict with constitutional provision by imposing new condition not found in text of article XXVIII. Secretary's stated purpose in enacting proposed rule not furthered by "definition" contained in proposed rule. Proposed rule does not further secretary's stated goal of achieving transparency of political contributions. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Plaintiffs demonstrated reasonable probability of success on the merits in alleging that administrative rule promulgated by secretary of state violated their constitutional rights to freedom of association as applied to them. Secretary's immediate enforcement of administrative rule forcing labor and other covered organizations to get written permission before using an individual's dues or contributions to fund political campaigns would have effectively prevented plaintiffs from exercising their first amendment rights in general election. Administrative rule was not narrowly tailored. Rationale justifying administrative rule was based upon speculation there would be dissenters, thereby impermissibly penalizing constitutional rights of the many for the speculative rights of the few.

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Accordingly, district court did not abuse its discretion by entering preliminary injunction against implementation of administrative rule. Sanger v. Dennis, 148 P.3d 404 (Colo. App. 2006).

Adoption of Rule 9.3 of the Colorado secretary of state's rules concerning campaign and political finance requiring the name of the candidate unambiguously referred to in the electioneering communication to be included in the electioneering report, was within the rulemaking authority of the secretary of state under § 9(1)(b) of article XXVIII of the state constitution and subsection (1) of this section. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

ALJ had jurisdiction to impose penalty for violation of Rule 9.3 and did not err by imposing a $1,000 penalty on political committee. Section (2)(a) of article XXVIII of the state constitution grants an ALJ authority to conduct hearings on alleged violations of the article and the "Fair Campaign Practices Act" and to impose penalties if a violation has occurred. Rule 9.3 is necessary to implement former § 1-45-109 (5), and, under § 10(2)(a) of article XXVIII of the state constitution, sanctions can be imposed for violations of § 1-45-109. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

ALJ did not err in determining that membership contribution claim was groundless and in awarding attorney fees against litigant. ALJ did not misinterpret subsection (2) by rejecting litigant's defense based on voluntary dismissal of its membership contributions claim under § 13-17-102 (5). Although § 1-45-111.5 (2) contains the same operative language and definitions as § 13-17-102 (4), at the time of the action, the FCPA did not incorporate § 13-17-102 (5) and contained no exception for dismissal of a groundless claim prior to hearing. Moreover, although § 13-17-102 applies to any civil action commenced or appealed in any court of record, "court of record" does not include administrative courts. Finally, the record showed that the ALJ considered litigant's arguments about the efforts it made after the filing of the action to reduce or dismiss claims it found to be invalid. Colo. Citizens for Ethics in Gov't v. Comm. for the Am. Dream, 187 P.3d 1207 (Colo. App. 2008).

Given that identical terms "substantially frivolous, substantially groundless, or substantially vexatious" are found in this section and in § 13-17-102, case law construing that section may be examined for guidance in construing terms used in this section. Colo. Ethics Watch v. Senate Major. Fund, 275 P.3d 674 (Colo. App. 2010), aff'd on other grounds, 2012 CO 12, 269 P.3d 1248.

A claim is frivolous if its proponents can present no rational argument based on the evidence or the law to support it. A claim is vexatious if it is brought or maintained in bad faith to annoy or harass another. Colo. Ethics Watch v. Senate Major. Fund, 275 P.3d 674 (Colo. App. 2010), aff'd on other grounds, 2012 CO 12, 269 P.3d 1248.

Subsection (2) of this section and § 9(2)(a) of article XXVIII of the state constitution do not permit a respondent who has been awarded attorney fees in an action under the Fair Campaign Practices Act (FCPA) to enforce the action in the district court. The plain language of subsection (2) and subsection 9(2)(a) of article XXVIII read together creates a nonreciprocal right to enforce an ALJ's award ordered in a campaign finance violation action and leaves a respondent without a remedy under either article XXVIII or the FCPA to enforce that award. While this may create an unintended result, the legislature or the people must determine the remedy and the court is not a board of editors with power to rewrite statutes or the constitution to improve them. Because respondent was not authorized by subsection 9(2)(a) of article XXVIII to seek enforcement of the ALJ's attorney fees order in the district court, the district court did not err when it dismissed her petition for lack of subject matter jurisdiction. McGihon v. Cave, 2016 COA 78, 410 P.3d 647.

Subsection (2) does not apply to costs on appeal. Camp. Int. Watchdog v. Colo. Better Future,

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2016 COA 51, rev'd on other grounds, 2018 CO 6, 409 P.3d 350; Camp. Int. Watchdog v. Colo. Better Future, 2016 COA 56M, 378 P.3d 852.

1-45-111.7. Campaign finance complaints - initial review - curing violations - investigation and enforcement - hearings - advisory opinions - document review - collection of debts resulting from campaign finance penalties - definitions.

(1) **Definitions.** As used in this section, unless the context otherwise requires:

(a) "Article XXVIII" means article XXVIII of the state constitution.

(b) "Deputy secretary" means the deputy secretary of state appointed pursuant to section 24-21-105 or the deputy secretary's designee.

(c) "Division" means the division within the office of the secretary responsible for administering the state's laws governing campaign and political finance.

(d) "Hearing officer" means a person authorized to conduct a hearing under section 24-4-105 (3).

(e) "Rules" means the rules of the secretary concerning campaign and political finance.

(f) "Secretary" means the secretary of state or the secretary's designate.

(2) **Filing complaints.** (a) Any person who believes that a violation has occurred of article XXVIII, this article 45, or the rules may file a complaint with the secretary.

(b) A complaint must be filed no later than one hundred eighty days after the date on which the complainant either knew or should have known, by the exercise of reasonable diligence, of the alleged violation.

(c) Any complaint must be filed in writing and signed by the complainant on the form provided by the secretary. The complaint must identify one or more respondents and include the information required to be provided on the form.

(d) Upon receipt of a complaint, the division shall notify the respondent of the complaint by e-mail or by regular mail if e-mail is unavailable.

(e) The division shall forward any complaint made against a candidate for secretary or the secretary to the department of law for the review of the complaint by the attorney general to act on behalf of the division in accordance with applicable requirements of this section.

(3) **Initial review.** (a) The division shall conduct an initial review of a complaint filed under subsection (2) of this section to determine whether the complaint:

(I) Was timely filed under subsection (2)(b) of this section;

(II) Specifically identifies one or more violations of article XXVIII, this article 45, or the rules; and

(III) Alleges sufficient facts to support a factual and legal basis for the violations of law alleged in the complaint.

(b) Within ten business days of receiving a complaint, the division shall take one or more of the actions specified in this subsection (3)(b):

(I) If the division makes an initial determination that the complaint was not timely filed, has not specifically identified one or more violations of article XXVIII, this article 45, or the rules, or does not assert facts sufficient to support a factual or legal basis for an alleged violation, the division shall prepare and file with the deputy secretary a motion to dismiss the complaint. The deputy secretary shall make a determination on the motion to dismiss within five business days, which must be provided to the complainant and the respondent by e-mail or by regular mail if e-mail is unavailable. If the deputy secretary denies the motion, the division shall determine whether to conduct a review under subsection (3)(b)(II) or (3)(b)(III) of this section. The final determination by the deputy secretary on the motion to dismiss constitutes final agency action and is subject to judicial review by a state district court under section 24-4-106.

(II) If the division makes an initial determination that the complaint alleges one or more curable violations as addressed in subsection (4) of this section, the division shall notify the respondent and provide the respondent an opportunity to cure the violations.

(III) If the division makes an initial determination that the complaint has specifically identified one or more violations of article XXVIII, this article 45, or the rules, and has alleged facts sufficient to support a factual or legal basis for each alleged violation, and that either a factual finding or a legal interpretation is required, the division shall conduct additional review under subsection (5) of this section within thirty days to determine whether to file a complaint with a hearing officer.

(4) **Curing violations.** (a) Upon the division's initial determination that a complaint alleges a failure to file or otherwise disclose required information, or alleges another curable violation, the division shall notify the respondent by e-mail or by regular mail if e-mail is unavailable of the curable deficiencies alleged in the complaint.

(b) The respondent has ten business days from the date the notice is e-mailed or mailed to file an amendment to any relevant report that cures any deficiencies specified in the notice.

(c) The respondent shall provide the division with notice of the respondent's intent to cure on the form provided by the secretary and include a copy of any amendments to any report containing one or more deficiencies.

(d) Upon receipt of the respondent's notice of an intent to cure, the division may ask the

respondent to provide additional information and may grant the respondent an extension of time to file an amended notice of intent to cure in order to respond to any such request.

(e) (I) After the period for cure has expired, the division shall determine whether the respondent has cured any violation alleged in the complaint and, if so, whether the respondent has substantially complied with its legal obligations under article XXVIII, this article 45, and the rules in accordance with subsection (4)(f) of this section.

(II) If the division determines that the respondent has substantially complied with its legal obligations, the division shall prepare and file with the deputy secretary a motion to dismiss the complaint. The motion must be accompanied by a draft order specifying the manner in which the respondent has satisfied the factors specified in subsection (4)(f) of this section. The deputy secretary shall make a determination on the motion to dismiss, which must be provided to the complainant and the respondent by e-mail or by regular mail if e-mail is unavailable. If the deputy secretary denies the motion, the division shall determine whether to conduct a review under subsection (3)(b)(II) or (3)(b)(III) of this section. The determination by the deputy secretary under this subsection (4)(e)(II) is final agency action and is subject to judicial review by a state district court under section 24-4-106.

(III) If the division determines that the respondent has failed to substantially comply under subsection (4)(f) of this section, the division shall conduct an additional review under subsection (5)(a) of this section to determine whether to file the complaint with a hearing officer.

(f) In determining whether an entity substantially complied with its legal obligations under article XXVIII, this article 45, or the rules the division must consider:

(I) The extent of the respondent's noncompliance;

(II) The purpose of the provision violated and whether that purpose was substantially achieved despite the noncompliance; and

(III) Whether the noncompliance may properly be viewed as an intentional attempt to mislead the electorate or election officials.

(g) If the division determines that the respondent failed to cure any alleged deficiency, the division shall conduct an additional review under subsection (5)(a) of this section to determine whether to file a complaint with a hearing officer.

(5) **Investigations and enforcement.** (a) (I) The division shall investigate each complaint that was not dismissed during either its initial review or by means of the cure proceedings in accordance with subsection (3) or (4) of this section to determine whether to file a complaint with a hearing officer. The division may also initiate an investigation under subsection (7)(b) of this section.

(II) For the purpose of an investigation relating to a complaint filed under subsection (2)(a)

of this section or an investigation initiated by the division under subsection (7)(b) of this section, the division may request the production of any documents or other tangible things that are believed to be relevant or material to the investigation, and shall establish the relevance and materiality in writing. Notwithstanding any other provision of law, documents or other tangible things provided to the division during the course of an investigation under this subsection (5) are not subject to inspection or copying under the "Colorado Open Records Act", part 2 of article 72 of title 24. Notwithstanding any other provision of law, documents or other tangible things provided to the division during the course of an investigation under this subsection (5) and other materials prepared or assembled to assist the secretary's designee in reaching a decision are work product as defined in section 24-72-202 (6.5)(a) and are not public records subject to inspection under part 2 of article 72 of title 24.

(III) If the division receives a person's membership list or donor list during the course of the division's initial review under subsection (3) of this section, investigation under this subsection (5), or the cure process, including the determination of substantial compliance, as described in subsection (4) of this section, the division shall not disclose such list or the identity of any member or donor to any person. Notwithstanding any other provision of law, any such membership or donor list is not a public record subject to inspection, copying, or any other form of reproduction under part 2 of article 72 of title 24.

(IV) The division shall determine whether it will file a complaint with a hearing officer within thirty days after initiating an investigation. If the division makes a determination that a complaint should not be filed with a hearing officer because there is not sufficient information to support the allegations contained in the complaint or for any other reason, it shall prepare and file with the deputy secretary a motion to dismiss the complaint. The deputy secretary shall make a determination on the motion to dismiss within thirty-five days of the initial determination of the division under this subsection (5)(a)(IV), or the initiation of an investigation by the division under subsection (7)(b) of this section, which must be provided to the complainant and the respondent by e-mail or by regular mail if e-mail is unavailable. If the deputy secretary denies the motion, the division has fourteen business days to file a complaint with a hearing officer under this subsection (5).

(V) If the division files a complaint with a hearing officer under this subsection (5), it is responsible for conducting such discovery as may be necessary for effectively prosecuting the complaint, supplementing or amending the complaint with such additional or alternative claims or allegations as may be supported by the division's investigation, amending the complaint to strike allegations or claims that are not supported by the division's investigation, and in all other respects prosecuting the complaint.

(b) A complainant or any other nonrespondent is not a party to the division's initial review, cure proceedings, investigation, or any proceedings before a hearing officer as described in this section. A complainant may seek permission from the hearing officer to file a brief as an amicus curiae. A person's status as a complainant is not sufficient to establish that he or she may be

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affected or aggrieved by the secretary's action on the complaint. To the extent this subsection (5)(b) conflicts in any respect with section 24-4-105 or 24-4-106, this subsection (5)(b) controls. A complainant may also seek judicial review by a state district court of a final agency action under section 24-4-106.

(6) **Conduct of hearings.** (a) Any hearing conducted by a hearing officer under this section must be in accordance with section 24-4-105; except that a hearing officer shall schedule a hearing within thirty days of the filing of the complaint, which hearing may be continued upon the motion of any party for up to thirty days or a longer extension of time upon a showing of good cause.

(b) Any initial determination made by a hearing officer must be made in accordance with section 24-4-105 and is subject to review by the deputy secretary. The final agency decision is subject to review under section 24-4-106.

(7) **Document review.** (a) In addition to any other powers and duties it possesses under law, the division may also review any document the secretary receives for filing under article XXVIII, this article 45, or the rules.

(b) In connection with the review of other available information regarding a potential violation under this subsection (7):

(I) If the division determines that a person violated or potentially violated any of the provisions of article XXVIII, this article 45, or the rules, the division shall either notify the person of his or her opportunity to cure the identified deficiencies in accordance with subsection (4) of this section or notify the person that the division is initiating an investigation under subsection (5) of this section. The division shall send the notification by e-mail or by regular mail if e-mail is unavailable.

(II) If the division initiates an investigation or files a complaint with a hearing officer in connection with its review, the procedures described in subsections (5) and (6) of this section apply.

(c) As used in this subsection (7), "review" means the factual inspection of any document required to be filed with the secretary for campaign finance registration, reporting, or disclosure in order to assess the document's accuracy and completeness and the timeliness of the document's filing.

(8) **Advisory opinions.** (a) Any person seeking guidance on the application of article XXVIII, this article 45, or the rules may request that the secretary issue an advisory opinion regarding that person's specific activity.

(b) The secretary shall determine, at the secretary's discretion, whether to issue an advisory opinion under subsection (8)(a) of this section. In making this determination, the secretary shall

consider factors including whether:

(I) The advisory opinion will terminate a controversy or remove one or more uncertainties as to the application of the law to the requestor's situation;

(II) The request involves a subject, question, or issue that concerns a formal or informal matter or investigation currently pending before the secretary or a court; and

(III) The request seeks a ruling on a moot or hypothetical question.

(c) A person may rely on an advisory opinion issued by the secretary as an affirmative defense to any complaint filed under this section.

(d) A refusal by the secretary to issue an advisory opinion does not constitute a final agency action that is subject to appeal.

(9) **Miscellaneous matters - debt collection - municipal complaints.** (a) The secretary may pursue collection of any outstanding debt resulting from a campaign finance penalty that the secretary deems collectible.

(b) Any complaint arising out of a municipal campaign finance matter must be exclusively filed with the clerk of the applicable municipality.

Source: L. 2019: Entire section added, (SB 19-232), ch. 330, p. 3059, § 1, effective July 1. **L. 2021:** (9)(a) amended, (SB 21-055), ch. 12, p. 75, § 2, effective March 21.

1-45-112. Duties of municipal clerk.

(1) The municipal clerk shall:

(a) Develop a filing and indexing system for their offices consistent with the purposes of this article;

(b) Keep a copy of any report or statement required to be filed by this article for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one year after the candidate leaves office;

(c) Make reports and statements filed under this article available to the public for inspection and copying no later than the end of the next business day after the date of filing. No information copied from such reports and statements shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(d) Upon request by the secretary of state, transmit records and statements filed under this article to the secretary of state;

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(e) Notify any person under their jurisdiction who has failed to fully comply with the provisions of this article and notify any person if a complaint has been filed with the secretary of state alleging a violation of this article.

(f) Repealed.

(2) The secretary of state shall reimburse the municipal clerk of each municipality at the rate of two dollars per candidate per election to help defray the cost of implementing this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2008:** (1)(f) repealed, p. 350, § 2, effective April 10. **L. 2009:** IP(1) and (2) amended, (HB 09-1357), ch. 361, p. 1874, § 3, effective July 1.

Editor's note: This section is similar to former § 1-45-115 as it existed prior to 1996.

1-45-112.5. Immunity from liability.

(1) Any individual volunteering his or her time on behalf of a candidate or candidate committee shall be immune from any liability for a fine or penalty imposed pursuant to section 10 (1) of article XXVIII of the state constitution in any proceeding that is based on an act or omission of such volunteer if:

(a) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for the candidate or candidate committee; and

(b) The violation was not caused by willful and intentional misconduct by such volunteer.

(2) Subsection (1) of this section shall be administered in a manner that is consistent with section 1 of article XXVIII of the state constitution and with the legislative declaration set forth in section 1-45-102.

(3) Any media outlet shall be immune from civil liability in any court where the media outlet:

(a) Withdraws advertising time reserved by an independent expenditure committee that fails to register in accordance with the requirements of section 1-45-107.5 (3)(a); or

(b) Elects to void an advertising contract and the advertisement:

(I) Is paid for by an independent expenditure committee that fails to register under section 1-45-107.5 (3)(a);

(II) Is paid for by an independent expenditure committee that is registered under section 1-45-107.5 (3)(a) but the committee fails to file a disclosure report under section 1-45-108 (2)

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through the date of the most recent required report; or

(III) Fails to satisfy the requirements of section 1-45-107.5 (5)(a).

(4) An affected media outlet may void a contract that implicates paragraph (b) of subsection (3) of this section in the sole discretion of the media outlet.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3. **L. 2010:** (3) and (4) added, (SB 10-203), ch. 269, p. 1237, § 7, effective May 25.

Cross references: For the legislative declaration in the 2010 act adding subsections (3) and (4), see section 1 of chapter 269, Session Laws of Colorado 2010.

1-45-113. Sanctions. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (6) added, p. 633, § 3, effective May 6; (6) added, p. 952, § 4, effective May 27. **L. 2000:** (1), (2), (3), and (4) amended, p. 127, § 9, effective March 15. **L. 2001:** (4) amended, p. 1110, § 1, effective September 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor (see editor's note, (2)).

Editor's note: (1) This section was similar to former § 1-45-121 as it existed prior to 1996.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-114. Expenditures - political advertising - rates and charges.

(1) No candidate shall pay to any radio or television station, newspaper, periodical, or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials, or services. Any such rate shall not be rebated, directly or indirectly.

(2) Any radio or television station, newspaper, or periodical that charges a candidate committee a lower rate for use of space, materials, or services than the rate such station, newspaper, periodical, or supplier charges another candidate committee for the same public office for comparable use of space, materials, or services shall report the difference in such rate

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as a contribution to the candidate committee that is charged such lower rate pursuant to section 1-45-108.

(3) Nothing in this article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs, and agency fees if such adjustments are offered consistently to other advertisers.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** Entire section amended, p. 128, § 10, effective March 15. **L. 2003:** (2) amended, p. 2160, § 5, effective June 3.

Editor's note: This section is similar to former § 1-45-118 as it existed prior to 1996.

1-45-115. Encouraging withdrawal from campaign prohibited.

No person shall offer or give any candidate or candidate committee any money or any other thing of value for the purpose of encouraging the withdrawal of the candidate's candidacy, nor shall any candidate offer to withdraw a candidacy in return for money or any other thing of value.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section is similar to former § 1-45-119 as it existed prior to 1996.

1-45-116. Home rule counties and municipalities.

Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act. Any home rule county or municipality which adopts such ordinances or charter provisions shall not be entitled to reimbursement pursuant to subsection 1-45-112 (2). The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2003:** Entire section amended, p. 2161, § 7, effective June 3.

Editor's note: This section is similar to former § 1-45-120 (1) as it existed prior to 1996.

ANNOTATION

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Because Colorado Springs, as a home rule municipality, enacted a campaign practices ordinance, this section expressly provides that neither the campaign finance provisions of the state constitution nor this article applies to a complaint submitted to the secretary of state (secretary) alleging that certain candidates for city council had violated the ordinance. Accordingly, an administrative law judge to whom the complaint had been forwarded by the secretary lacks subject matter jurisdiction over campaign practices arising out of the city's elections and properly dismissed the complaint. The attempted referral of the complaint to the secretary conflicts with the clear intent of the general assembly to exclude home rule municipality elections from state disclosure requirements when the home rule municipality has adopted its own ordinances regulating campaign practices. In re City of Colo. Springs, 2012 COA 55, 277 P.3d 937.

1-45-117. State and political subdivisions - limitations on contributions.

(1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision of the state shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity make any donation to any other person for the purpose of making an independent expenditure, nor shall any such entity expend any moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) Statewide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which

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shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such

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information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) (a) Any violation of this section shall be subject to the provisions of sections 9 (2) and 10 (1) of article XXVIII of the state constitution or any appropriate order or relief, including an order directing the person making a contribution or expenditure in violation of this section to reimburse the fund of the state or political subdivision, as applicable, from which such moneys were diverted for the amount of the contribution or expenditure, injunctive relief, or a restraining order to enjoin the continuance of the violation.

(b) If a board, commission, or council is found to have made a contribution or expenditure in violation of this section, an individual member of the board, commission, or council who voted in favor of or otherwise authorized the contribution or expenditure may be ordered to reimburse an amount pursuant to subsection (4)(a) of this section as long as the amount does not exceed the amount ordered to be reimbursed by any other individual of the board, commission, or council who voted in favor or otherwise authorized the contribution or expenditure.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2002:** (4) added, p. 280, § 1, effective August 7. **L. 2008:** (4) amended, p. 350, § 3, effective April 10. **L. 2010:** IP(1)(a)(I) amended, (SB 10-203), ch. 269, p. 1237, § 8, effective May 25. **L. 2015:** (4) amended, (HB 15-1074), ch. 89, p. 256, § 1, effective August 5. **L. 2018:** (4)(b) amended, (HB 18-1047), ch. 155, p. 1096, § 8, effective April 23.

Editor's note: This section is similar to former § 1-45-116 as it existed prior to 1996.

Cross references: For the legislative declaration in the 2010 act amending the introductory portion to subsection (1)(a)(I), see section 1 of chapter 269, Session Laws of Colorado 2010.

ANNOTATION

Annotator's note. Since § 1-45-117 is similar to § 1-45-116 as it existed prior to the 1997 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

The purpose of this section is to prohibit the state government and its officials from spending public funds to influence the outcome of campaigns for political office or ballot issues. Colo. Common Cause v. Coffman, 85 P.3d 551 (Colo. App. 2003), aff'd, 102 P.3d 999 (Colo. 2004).

This section must be strictly construed. It is an established principle that statutes regarding the use of public funds to influence the outcome of elections are strictly construed. Coffman v. Colo. Common Cause, 102 P.3d 999 (Colo. 2004).

A contribution under § 2(5)(a)(IV) of article XXVIII of the state constitution and as incorporated

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by reference into § 1-45-103 (6)(a) requires that: (1) a thing of value (2) be given to a candidate, either directly or indirectly, (3) in order to promote the candidate's nomination, retention, recall, or election. Keim v. Douglas County Sch. Dist., 2017 CO 81, 397 P.3d 377.

Moneys in fund administered by the Colorado compensation insurance authority that consisted primarily of premiums paid into the fund by employers constituted "public moneys" for purposes of this section. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

While the term "public moneys" is not defined, the all-inclusive language "from any source" indicates that the general assembly intended an expansive definition of the phrase. Thus, the term "public moneys" may not be construed to refer only to sums realized from the imposition of taxes. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

Although moneys collected by the political subdivision were not derived from state-imposed sales, use, property, or income taxes, those moneys may be spent by the political subdivision only for authorized public purposes. The general assembly has in essence declared that the expenditure of moneys in the fund for purposes prohibited by this section are not authorized expenditures for public purposes. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

This section prohibits the use of "public moneys from any source," not the use of "public funds". The general assembly thus selected a phrase not previously construed in seeking to limit the expenditure of funds by various governmental entities for certain purposes. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

This section tends to promote public confidence in government by prohibiting the use of moneys authorized for expenditure by political subdivisions for specified public purposes to advance the personal viewpoint of one group over another. A political subdivision's use of moneys that were authorized for expenditure for the benefit of an insured to oppose the passage of an amendment proposed by an insured is the type of conduct the general assembly intended to prohibit by the enactment of this section. Denver Area Labor Fed'n v. Buckley, 924 P.2d 524 (Colo. 1996).

Subsection (4), and not § 10(1) of article XXVIII of state constitution, provides basis for sanctions against special district that allegedly violated subsection (1)(b)(I) by urging voters to support ballot issue. Plaintiff's sole argument to ALJ was that special district violated subsection (1)(b)(I) by urging voters to support ballot issue. Plaintiff made no argument that expenditure violated a contribution or spending limit nor did plaintiff make any other argument concerning the amount district spent. Sherritt v. Rocky Mtn. Fire Dist., 205 P.3d 544 (Colo. App. 2009).

No abuse of discretion by administrative law judge (ALJ) in refusing to sanction special district at higher amount requested by plaintiff. Under subsection (4), ALJ had discretion to determine "any appropriate order or relief". In sanctioning district, ALJ cited district's attempt to comply with the law and the absence of prior violations. ALJ found that public funds would be used to satisfy the penalty and, therefore, a large fine would compound the problem. In exercising his or her discretion, ALJ properly considered needs of the public. Additionally, ALJ's findings have record support and were neither arbitrary, capricious, unsupported by the evidence, nor contrary to law. Sherritt v. Rocky Mtn. Fire Dist., 205 P.3d 544 (Colo. App. 2009).

What is of "official concern" to school district board of education is to be determined by reference to the official powers and duties delegated by the general assembly in the school laws. Mtn. States Legal Found. v. Denver Sch. Dist. No. 1, 459 F. Supp. 357 (D. Colo. 1978).

A matter of official concern is one which at the very least involves questions which come before the

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officials for an official decision. Campbell v. Joint Dist. 28-J, 704 F.2d 501 (10th Cir. 1983).

Proposed constitutional amendment not of official concern. A proposed amendment to the state constitution on a general election ballot is not a matter of official concern. Campbell v. Joint Dist. 28-J, 704 F.2d 501 (10th Cir. 1983).

Not determined solely by board. The characterization of a campaign issue as being of "official concern" is not a judgment which can be made solely by the board of education; such an interpretation of this section would give unlimited discretion to the school board to use school funds and school facilities whenever it suited the personal preference of the majority of the members. Mtn. States Legal Found. v. Denver Sch. Dist. No. 1, 459 F. Supp. 357 (D. Colo. 1978).

This section allows an employee with policy-making responsibility to expend public funds up to the $50 limit in expressing an opinion about a pending ballot issue. Regents of the Univ. of Colo. v. Meyer, 899 P.2d 316 (Colo. App. 1995).

Paid staff time is a contribution in kind for purposes of this section. Time spent by the state treasurer's staff during work hours on a non-volunteer basis preparing and disseminating press releases expressing the state treasurer's opposition to a statewide ballot issue therefore violated this section to the extent that the value of that time exceeded $50. Coffman v. Colo. Common Cause, 102 P.3d 999 (Colo. 2004).

State treasurer's press conference and press releases opposing a statewide ballot issue violated this section. The press releases were not balanced factual summaries of the ballot issue and were not resolutions because they were not formal expressions of a voting body. The state treasurer expended more than $50 in preparing the press releases and was not permitted to expend more than that to take a position of advocacy. Colo. Common Cause v. Coffman, 85 P.3d 551 (Colo. App. 2003), aff'd, 102 P.3d 999 (Colo. 2004).

Public school payroll deduction system for teachers' union dues, a portion of which was given by the union to a political action committee, did not constitute a "contribution in kind" because it did not support a specific "issue" or "candidate" that the political action committee supported or opposed during the time that the district made the payroll deductions. Mtn. States v. Secretary of State, 946 P.2d 586 (Colo. App. 1997) (decided under law in effect prior to 1997 amendment).

Brochure mailed by metropolitan districts explaining proposed improvements violated this section. The brochure, when read in its entirety, did not present arguments for and against the issue. In fact, it took a position exclusively in favor of the issue, presented no contrary arguments, and expressly advocated the passage of the bond initiative that was titled only days after the mailing of the brochure. Thus, it urged voters to vote for the initiative. Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

Although brochure did not mention ballot initiative by name, administrative law judge appropriately concluded that the language of this section does not require that level of specificity. The section prohibits "the urging of electors to vote a certain way." Skruch v. Highlands Ranch Metro. Dists., 107 P.3d 1140 (Colo. App. 2004).

School district did not make a prohibited contribution to a campaign under § 2(5)(a)(IV) of article XXVIII and subsection (1)(a)(I) of this section. A research report from a national think tank supportive of a school district's educational reform efforts that the district commissioned and paid for with public funds constitutes a "thing of value" for purposes of the definition of "contribution". The district did not make a prohibited contribution to a campaign, however, when it broadly disseminated an email of the

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report to county residents. Something of value is not given to a candidate when it is publicly distributed, even if the candidate happens to be among the public to which the thing of value has been made available. Keim v. Douglas County Sch. Dist., 2017 CO 81, 397 P.3d 377.

1-45-117.5. Media outlets - political records.

Any media outlet that is subject to the provisions of 47 U.S.C. sec. 315 (e) shall maintain and make available for public inspection such records as the outlet is required to maintain to comply with federal law or rules.

Source: L. 2010: Entire section added, (SB 10-203), ch. 269, p. 1231, § 4, effective May 25.

Cross references: For the legislative declaration in the 2010 act adding this section, see section 1 of chapter 269, Session Laws of Colorado 2010.

1-45-118. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

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ARTICLE 1
SPECIAL DISTRICT PROVISIONS

Editor's note: This article was numbered as articles 8-10, 16-18, 22, and 26 of chapter 89, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1981, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1981, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers are shown in editor's notes following those sections that were relocated. For a detailed comparison of this article, see the comparative tables located in the back of the index.

Cross references: For foreclosure proceedings for a special district, see part 11 of article 25 of title 31.

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PART 1
GENERAL PROVISIONS

32-1-101. Short title.

This article shall be known and may be cited as the "Special District Act".

Source: L. 81: Entire article R&RE, p. 1542, § 1, effective July 1.

ANNOTATION

Law reviews. For article, "1985 Special District Legislation", see 14 Colo. Law. 2178 (1985). For article, "Colorado Special Districts and Chapter 9 -- Parts I and II", see 20 Colo. Law. 2475 (1991) and 21 Colo. Law. 1 (1992).

Special district act not applicable to special districts organized under law preceding the 1965 Special District Control Act. Senior Corp. v. Bd. of Assessment Appeals, 702 P.2d 732 (Colo. 1985).

General assembly has plenary power to create quasi-municipal corporations, whether by creating such districts directly or making the creation of such districts contingent upon future and uncertain events. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

32-1-102. Legislative declaration.

(1) The general assembly hereby declares that the organization of special districts providing the services and having the purposes, powers, and authority provided in this article will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants of such districts and of the people of the state of Colorado.

(2) The general assembly further declares that the procedures contained in part 2 of this article are necessary for the coordinated and orderly creation of special districts and for the logical extension of special district services throughout the state. It is the purpose of part 2 of this article to prevent unnecessary proliferation and fragmentation of local government and to avoid excessive diffusion of local tax sources.

(3) The general assembly further declares that the purpose of part 5 of this article is to facilitate the elimination of the overlapping of services provided by local governments and the double taxation which may occur because of annexation or otherwise when all or part of the taxable property of an area lies within the boundaries of both a municipality and a special district.

(4) The general assembly further declares that it is the policy of this state to provide for and

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encourage the consolidation of special districts and to provide the means therefor by simple procedures in order to prevent or reduce duplication, overlapping, and fragmentation of the functions and facilities of special districts; that such consolidation will better serve the people of this state; and that consolidated districts will result in reduced costs and increased efficiency of operation.

(5) The general assembly further declares that the purpose of part 7 of this article is to facilitate dissolution of special districts in order to reduce the proliferation, fragmentation, and overlapping of local governments and to encourage assumption of services by other governmental entities.

Source: L. 81: Entire article R&RE, p. 1542, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Applied in Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

32-1-103. Definitions.

As used in this article 1, unless the context otherwise requires:

(1) "Ambulance district" means a special district which provides emergency medical services and the transportation of sick, disabled, or injured persons by motor vehicle, aircraft, or other form of transportation to and from facilities providing medical services. For the purpose of this subsection (1), "emergency medical services" means services engaged in providing initial emergency medical assistance, including, but not limited to, the treatment of trauma and burns and respiratory, circulatory, and obstetrical emergencies.

(1.5) "Board" means the board of directors of a special district.

(2) "Court" means the district court in any county in which the petition for organization of the special district was originally filed and which entered the order organizing said district or the district court to which the file pertaining to the special district has been transferred pursuant to section 32-1-303 (1)(b).

(2.5) "Depository institution" means:

(a) A person that is organized or chartered, or is doing business or holds an authorization certificate, under the laws of a state or of the United States which authorize the person to receive

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deposits, including deposits in savings, shares, certificates, or other deposit accounts, and that is supervised and examined for the protection of depositors by an official or agency of a state or the United States; and

(b) A trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type that a national bank is permitted to exercise under the authority of the comptroller of the currency and that is supervised and examined by an official or agency of a state or the United States. The term does not include an insurance company or other organization primarily engaged in the insurance business.

(3) "Director" means a member of the board.

(4) "Division" means the division of local government in the department of local affairs.

(4.5) "Early childhood development service district" means a special district created pursuant to article 21 of this title 32 to provide, directly or indirectly, early childhood development services to children from birth through eight years of age.

(5) (a) "Eligible elector" means a person who, at the designated time or event, is registered to vote pursuant to the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., and:

(I) Who is a resident of the special district or the area to be included in the special district; or

(II) Who, or whose spouse or civil union partner, owns taxable real or personal property situated within the boundaries of the special district or the area to be included in the special district, whether said person resides within the special district or not.

(b) A person who is obligated to pay taxes under a contract to purchase taxable property situated within the boundaries of the special district or the area to be included within the special district shall be considered an owner within the meaning of this subsection (5).

(c) Repealed.

(d) For all elections and petitions that require ownership of real property or land, the ownership of a mobile home as defined in section 38-12-201.5 (5) or 5-1-301 (29), or a manufactured home as defined in section 42-1-102 (48.8), is sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

(e) In the event that the board, by resolution, ends business personal property taxation by the district pursuant to subsection (8)(b) of section 20 of article X of the state constitution, persons owning such property and spouses or civil union partners of such persons shall not be eligible electors of the district on the basis of ownership of such property.

(6) Repealed.

(6.5) "Financial institution or institutional investor" means any of the following, whether

acting for itself or others in a fiduciary capacity:

(a) A depository institution;

(b) An insurance company;

(c) A separate account of an insurance company;

(d) An investment company registered under the federal "Investment Company Act of 1940";

(e) A business development company as defined in the federal "Investment Company Act of 1940";

(f) Any private business development company as defined in the federal "Investment Company Act of 1940";

(g) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of five million dollars or its investment decisions are made by a named fiduciary, as defined in the federal "Employee Retirement Income Security Act of 1974", that is a broker-dealer registered under the federal "Securities Exchange Act of 1934", an investment adviser registered or exempt from registration under the federal "Investment Advisers Act of 1940", a depository institution, or an insurance company;

(h) An entity, but not an individual, a substantial part of whose business activities consists of investing, purchasing, selling, or trading in securities of more than one issuer and not of its own issue and that has total assets in excess of five million dollars as of the end of its last fiscal year; and

(i) A small business investment company licensed by the federal small business administration under the federal "Small Business Investment Act of 1958".

(7) "Fire protection district" means a special district which provides protection against fire by any available means and which may supply ambulance and emergency medical and rescue services.

(7.5) "Forest improvement district" means a special district created pursuant to article 18 of this title that protects communities from wildfires and improves the condition of forests in the district.

(8) "Governing body" means a city council or board of trustees and includes a body or board where the operation and management of service is under the control of a municipal body or board other than a city council or board of trustees.

(8.5) "Health assurance district" means a special district that is created to organize, operate, control, direct, manage, contract for, furnish, or provide, directly or indirectly, health-care services to residents of the district and family members of such residents who are in need of such

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services.

(9) "Health service district" means a special district that may establish, maintain, or operate, directly or indirectly through lease to or from other parties or other arrangement, public hospitals, convalescent centers, nursing care facilities, intermediate care facilities, emergency facilities, community clinics, or other facilities licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S., providing health and personal care services and may organize, own, operate, control, direct, manage, contract for, or furnish ambulance service.

(9.3) "Inactive special district" means a special district in a predevelopment stage that has no residents other than those who lived within the district boundaries prior to the formation of the district, no business or commercial ventures or facilities within its boundaries, has not issued any general obligation or revenue debt and does not have any financial obligations outstanding or contracts in effect that require performance by the district during the time the district is inactive, has not imposed a mill levy for tax collection in that fiscal year, anticipates no receipt of revenue and has no planned expenditures, except for statutory compliance, in that fiscal year, has no operation or maintenance responsibility for any facilities, has initially filed a notice of inactive status pursuant to section 32-1-104 (3), and, each year thereafter, has filed a notice of continuing inactive status pursuant to section 32-1-104 (4).

(9.5) "Mental health-care service district" means a special district created pursuant to this article to provide, directly or indirectly, mental health-care services to residents of the district who are in need of mental health-care services and to family members of such residents.

(10) "Metropolitan district" means a special district that provides for the inhabitants thereof any two or more of the following services:

(a) Fire protection;

(b) Mosquito control;

(c) Parks and recreation;

(d) Safety protection;

(e) Sanitation;

(f) Solid waste disposal facilities or collection and transportation of solid waste;

(g) Street improvement;

(h) Television relay and translation;

(i) Transportation;

(j) Water.

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(11) "Municipality" means a municipality as defined in section 31-1-101 (6), C.R.S.

(12) "Net effective interest rate" means the net interest cost of securities issued by a public body divided by the sum of the products derived by multiplying the principal amount of the securities maturing on each maturity date by the number of years from their date to their respective maturities. In all cases, net effective interest rate shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(13) "Net interest cost" means the total amount of interest to accrue on securities issued by a public body from their date to their respective maturities, less the amount of any premium above par, or plus the amount of any discount below par, at which said securities are being or have been sold. In all cases net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates of the securities.

(14) "Park and recreation district" means a special district which provides parks or recreational facilities or programs within said district.

(14.5) "Property owners list" means the list furnished by the county assessor in accordance with section 1-5-304, 1-13.5-204, or 1-13.5-1105 (2)(a) and (2)(b) showing each property owner within the district, as shown on a deed or contract of record.

(15) "Publication" means printing one time, in one newspaper of general circulation in the special district or proposed special district if there is such a newspaper, and, if not, then in a newspaper in the county in which the special district or proposed special district is located. For a special district with territory within more than one county, if publication cannot be made in one newspaper of general circulation in the special district, then one publication is required in a newspaper in each county in which the special district is located and in which the special district also has fifty or more eligible electors.

(16) "Quorum" means more than one-half of the number of directors serving on the board of a special district.

(17) "Regular special district election" means the election on the Tuesday succeeding the first Monday of May in every odd-numbered year, held for the purpose of electing members to the boards of special districts and for submission of other public questions, if any.

(17.5) (Deleted by amendment, L. 92, p. 874, § 105, effective January 1, 1993.)

(18) "Sanitation district" means a special district that provides for storm or sanitary sewers, or both, flood and surface drainage, treatment and disposal works and facilities, or solid waste disposal facilities or waste services, and all necessary or proper equipment and appurtenances incident thereto.

(19) "Secretary" means the secretary of the board.

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(19.5) "Solid waste" shall have the same definition as specified in section 30-20-101 (6), C.R.S.

(20) "Special district" means any quasi-municipal corporation and political subdivision organized or acting pursuant to the provisions of this article. "Special district" does not include any entity organized or acting pursuant to the provisions of article 8 of title 29, article 20 of title 30, article 25 of title 31, or articles 41 to 50 of title 37, C.R.S.

(21) "Special election" means any election called by the board for submission of public questions and other matters. The election shall be held on the first Tuesday after the first Monday in February, May, October, or December, in November of even-numbered years or on the first Tuesday in November of odd-numbered years. Any special district may petition a district court judge who has jurisdiction in such district for permission to hold a special election on a day other than those specified in this subsection (21). The district court judge may grant permission only upon a finding that an election on the days specified would be impossible or impracticable or upon a finding that an unforeseeable emergency would require an election on a day other than those specified.

(22) "Taxable property" means real or personal property subject to general ad valorem taxes. "Taxable property" does not include the ownership of property on which a specific ownership tax is paid pursuant to law.

(23) (a) "Taxpaying elector" means an eligible elector of a special district who, or whose spouse or civil union partner, owns taxable real or personal property within the special district or the area to be included in or excluded from the special district, whether the person resides within the special district or not.

(b) A person who is obligated to pay taxes under a contract to purchase taxable property within the special district shall be considered an owner within the meaning of this subsection (23).

(c) For all elections and petitions that require ownership of real property or land, the ownership of a mobile home as defined in section 38-12-201.5 (5) or 5-1-301 (29), or a manufactured home as defined in section 42-1-102 (48.8), is sufficient to qualify as ownership of real property or land for the purpose of voting rights and petitions.

(23.2) "Tunnel" means one or more holes under or through the ground, mountains, rock formations, or other natural or man-made material, including roads, railroads, pipelines, and other means of transporting vehicles, people, or goods through any such tunnel, whether located in the tunnel or, to the extent the same connects the tunnel to other similar facilities, located outside the tunnel. "Tunnel" also means any ventilation, drainage, and support facilities, toll collection facilities, administrative facilities, and other facilities necessary or convenient to the acquisition, construction, improvement, equipping, operation, or maintenance of the tunnel or to

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the operation of the tunnel district, whether located within or without the tunnel.

(23.5) "Tunnel district" means a special district which provides a tunnel.

(24) "Water and sanitation district" means a special district which provides both water district and sanitation district services.

(25) "Water district" means a special district which supplies water for domestic and other public and private purposes by any available means and provides all necessary or proper reservoirs, treatment works and facilities, equipment, and appurtenances incident thereto.

Source: L. 81: Entire article R&RE, p. 1543, § 1, effective July 1. **L. 82:** (5)(d) and (23)(c) added, p. 546, §§ 5, 6, effective April 15. **L. 83:** (1) R&RE and (1.5) added, p. 412, §§ 2, 3, effective June 1. **L. 85:** (20) amended, p. 1097, § 1, effective April 30; (21) amended, p. 1027, § 4, effective July 1; IP(5)(a) and (5)(a)(I) amended and (14.5) and (17.5) added, p. 1083, § 1, effective July 1, 1986. **L. 86:** (5)(c) repealed and (21) amended, pp. 1068, 814, §§ 3, 6, effective July 1. **L. 87:** (23.2) and (23.5) added, p. 1232, § 1, effective May 13; IP(5)(a), (5)(a)(I), (5)(b), and (14.5) amended, p. 333, § 100, effective July 1. **L. 89:** (6) repealed, p. 1135, § 85, effective July 1. **L. 90:** (5)(d) amended, p. 1848, § 46, effective May 31. **L. 91:** (2.5) and (6.5) added, p. 780, § 2, effective June 4. **L. 92:** IP(5)(a), (17), (17.5), (21), and (23)(a) amended, p. 874, § 105, effective January 1, 1993. **L. 93:** (5)(a)(I) and (21) amended, p. 1438, § 133, effective July 1. **L. 94:** (5)(d) and (23)(c) amended, p. 706, § 10, effective April 19; (14.5) and (15) amended, p. 1194, § 97, effective July 1; (5)(a)(I) amended, p. 1775, § 45, effective January 1, 1995; (5)(d) and (23)(c) amended, p. 2565, § 79, effective January 1, 1995. **L. 96:** (5)(e) added and (9) and (14.5) amended, pp. 1771, 470, §§ 72, 1, 73, effective July 1. **L. 98:** (10) and (18) amended and (19.5) added, p. 1069, § 1, effective June 1. **L. 2001:** (5)(d) and (23)(c) amended, p. 1276, § 42, effective June 5. **L. 2003:** (9) amended, p. 715, § 58, effective July 1. **L. 2005:** (9.5) added, p. 1035, § 1, effective June 2. **L. 2007:** (7.5) added, p. 425, § 1, effective April 9; (8.5) added, p. 1186, § 1, effective July 1. **L. 2009:** (20) amended, (SB 09-292), ch. 369, p. 1979, § 109, effective August 5. **L. 2010:** (9.3) added, (HB 10-1362), ch. 360, p. 1710, § 1, effective August 11. **L. 2014:** (5)(a), (5)(e), and (23)(a) amended, (HB 14-1164), ch. 2, p. 70, § 29, effective February 18. **L. 2018:** IP and (17) amended, (HB 18-1039), ch. 29, p. 330, § 3, effective July 1, 2022. **L. 2019:** IP amended and (4.5) added, (HB 19-1052), ch. 72, p. 257, § 1, effective August 2. **L. 2020:** (5)(d) and (23)(c) amended, (HB 20-1196), ch. 195, p. 927, § 18, effective June 30. **L. 2021:** (14.5) amended, (SB 21-160), ch. 133, p. 538, § 6, effective September 7. **L. 2022:** (5)(d) and (23)(c) amended, (SB 22-212), ch. 421, p. 2982, § 73, effective August 10.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to subsection (5)(d) by Senate Bill 94-092 and Senate Bill 94-001 were harmonized. Amendments to subsection (23)(c) by Senate Bill 94-092 and Senate Bill 94-001 were

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harmonized.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

ANNOTATION

Constitutional challenge to subsection (5) of this section on grounds that denying corporate entities the right to vote on the formation of a special district violates the equal protection clause was premature when no petition for organization was pending before district court. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

District organizers' contracts did not make them eligible electors under subsection (5). The purpose of requiring a district to gain approval from persons who own property within a district before it imposes a new tax is to allow the people who will have to pay the tax to decide whether the tax should be levied. The organizers' contracts did not comport with this purpose because they were illusory. Landmark Towers Ass'n v. UMB Bank, 2016 COA 61, 436 P.3d 1126, rev'd on other grounds, 2017 CO 107, 408 P.3d 836.

Organizers' contracts for options to purchase parcels were sham agreements. The size of the individual parcels was so small that ownership of such a parcel would not permit any beneficial use thereof; though the contracts purported to obligate the option holder to pay property taxes, they also waived any right to specific performance of the obligation to pay and any right to seek damages for any failure to pay, making the obligation to pay taxes illusory; one of the organizers testified, without contradiction, that the organizers agreed amongst themselves that none of them would have to pay taxes on the parcels; none of the organizers paid the down payment required by the option contracts; none of the organizers paid any property taxes; none of the organizers exercised their options to purchase; and none of the contracts was ever recorded in the real property records. Landmark Towers Ass'n v. UMB Bank, 2016 COA 61, 436 P.3d 1126, rev'd on other grounds, 2017 CO 107, 408 P.3d 836.

Nothing in subsection (5)(b) indicates that a current obligation to pay property taxes at closing would not qualify a person with such an obligation as an eligible elector. Subsection (5)(b) qualifies those who are obligated to pay taxes under a contract to purchase taxable property within a special district as eligible electors in that district. The contracts required buyers to begin paying property taxes on their units at the time of closing. This obligation existed at the time of the TABOR election. Thus, buyers under contract to purchase units located in the special district were eligible electors. Landmark Towers Ass'n v. UMB Bank, 2016 COA 61, 436 P.3d 1126, rev'd on other grounds, 2017 CO 107, 408 P.3d 836.

Because the buyers were eligible electors, they should have received notice of the election as constitutionally required by TABOR. Landmark Towers Ass'n v. UMB Bank, 2016 COA 61, 436 P.3d 1126, rev'd on other grounds, 2017 CO 107, 408 P.3d 836.

32-1-104. Establishment of a special districts file.

(1) The division shall promptly establish and maintain on a current basis, as a public record, a file listing by name all special districts, listing the names and addresses of all the members of the boards of the special districts, and recording all changes in the names or boundaries of the

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special districts. The file shall also list the names of the officers of each special district and a business address, a telephone number, and the name of a contact person for each district. Annually, the division shall compile and maintain a current and revised list of special districts for public inspection. Each special district shall register its business address, its telephone number, and the name of a contact person with the division when certifying the results of a district election pursuant to section 1-11-103 or 1-13.5-1305 (1).

(2) On or before January 15 of each year, a special district shall file a copy of the notice required pursuant section 32-1-809 (1) with the board of county commissioners, the county assessor, the county treasurer, and the county clerk and recorder of each county in which the special district is located, the governing body of any municipality in which the special district is located, and the division.

(3) (a) The board of directors of an inactive special district may adopt a resolution that describes and affirms its qualifications for its inactive status and may direct that a notice of inactive status be filed with the board of county commissioners and the city council of each county and city that approved its service plan pursuant to section 32-1-204 or 32-1-204.5; the treasurer, assessor, and the clerk and recorder of the county or counties in which the inactive special district is located; the district court having jurisdiction over the formation of the special district; the state auditor; and the division of local government. The notice of inactive status shall be filed on or before December 15 of the year in which the board adopts a resolution of inactive status. At the time of filing the notice of inactive status, the district shall be in compliance with each of the requirements specified in subsection (5) of this section.

(b) When the board of directors of a district on inactive status determines that the district shall return to active status, the board shall adopt a resolution that declares the district's return to active status and authorizes the filing of a notice of the district's determination to return to active status with the same such entities that received the notice of inactive status under paragraph (a) of this subsection (3). The district's board of directors shall cause the district to be brought into compliance for the remainder of the fiscal year in which the district returns to active status with all legal requirements specified in this section for which the district has otherwise been exempt while on inactive status. The district shall be in compliance with such requirements within ninety days of delivery of notice of the board's determination to return to active status pursuant to this paragraph (b). The notices delivered pursuant to this subsection (3) shall be by certified mail, return receipt requested, except where electronic filing is required by the receiving entity.

(c) The notice of inactive status, notice of continuing inactive status, and notice of return to active status shall be standard forms developed by the division and shall be made available on the division's website.

(d) A special district shall not return to active status until it has filed an information statement under section 32-1-104.8.

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(4) The special district shall be on inactive status during the period commencing with the filing of its notice of inactive status pursuant to paragraph (a) of subsection (3) of this section until such time as it has issued a notice of its determination to return to active status pursuant to paragraph (b) of subsection (3) of this section. During the period that a district is on inactive status, it shall not issue any debt, impose a mill levy, or conduct any other official business other than to conduct elections and to undertake procedures necessary to implement the district's intention to return to active status. Inactive special districts shall file with the state auditor and the division on or before December 15 of each year in which the district is on inactive status a notice that it is continuing in such status for the next fiscal year.

(5) Notwithstanding any other provision of law, inactive special districts are exempt from compliance with subsection (2) of this section; sections 32-1-104.5 (3), 32-1-207 (3)(c), 32-1-306, 32-1-809, and 32-1-903; parts 1, 2, and 6 of article 1 of title 29; and part 1 of article 1 and part 1 of article 5 of title 39.

Source: L. 81: Entire article R&RE, p. 1545, § 1, effective July 1. **L. 85:** Entire section amended, p. 1020, § 5, effective July 1. **L. 92:** (1) amended, p. 875, § 106, effective January 1, 1993. **L. 93:** (1) amended, p. 1790, § 77, effective June 6. **L. 94:** (1) amended, p. 1194, § 98, effective July 1. **L. 2010:** (3), (4), and (5) added, (HB 10-1362), ch. 360, p. 1710, § 2, effective August 11. **L. 2013:** (3)(d) added, (HB 13-1186), ch. 102, p. 325, § 3, effective August 7. **L. 2015:** (1) and (2) amended, (HB 15-1092), ch. 87, p. 250, § 2, effective August 5. **L. 2021:** (1) amended, (SB 21-160), ch. 133, p. 538, § 7, effective September 7; (5) amended, (SB 21-262), ch. 368, p. 2427, § 2, effective September 7.

Editor's note: This section is similar to former § 32-1-103 as it existed prior to 1981.

32-1-104.5. Audit and budget requirements - election results - description on state websites.

(1) The division shall post on its official website in a form that is readily accessible to the public:

(a) A general description in plain, nontechnical language of the requirements for a special district to have an annual audit of the district's financial statements prepared in accordance with the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, C.R.S., and information about where a copy of the audit report is available for public inspection;

(b) A general description in plain, nontechnical language of the process and requirements for a special district to adopt an annual budget in accordance with the "Local Government Budget Law of Colorado", part 1 of article 1 of title 29, C.R.S., and information about where a copy of the budget is available for public inspection; and

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(c) The election results certified to the division pursuant to section 1-11-103 (3), C.R.S.

(2) The secretary of state shall provide a link to the election results posted by the division pursuant to paragraph (c) of subsection (1) of this section on the official website of the department of state.

(3) (a) Except as provided in subsection (3)(d) of this section, within one year of the date an order and decree has been issued by a district court for a newly organized metropolitan district, or by January 1, 2023, for any metropolitan district that has received an order and decree from the district court in connection with its organization after January 1, 2000, but before January 1, 2022, the metropolitan district shall establish, maintain, and, unless otherwise specified, annually update an official website in a form that is readily accessible to the public that contains the following information:

(I) The names, terms, and contact information for the current directors of the board of the metropolitan district and of the manager of the metropolitan district, if applicable;

(II) The current fiscal year budget of the metropolitan district and, within thirty days of adoption by the board of the metropolitan district, any amendments to the budget;

(III) The prior year's audited financial statements of the metropolitan district, if applicable, or an application for exemption from an audit prepared in accordance with the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, within thirty days of the filing of the application with the state auditor;

(IV) The annual report of the metropolitan district in accordance with section 32-1-207 (3)(c);

(V) By January 30 of each year, the date, time, and location of scheduled regular meetings of the district's board for the current fiscal year;

(VI) If required by section 1-13.5-501 (1.5), by no later than seventy-five days prior to a regular election for an election at which members of a board of directors for a metropolitan district will be considered, the call for nominations pursuant to section 1-13.5-501 (1);

(VII) Not more than thirty days after an election, certified election results for an election conducted within the current fiscal year;

(VIII) A current map depicting the boundaries of the metropolitan district as of January 1 of the current fiscal year; and

(IX) Any other information deemed appropriate by the board of directors of the metropolitan district.

(b) Metropolitan districts serving the same community may establish and maintain a

consolidated website provided the website clearly identifies each metropolitan district and provides the required information specified in subsection (3)(a) of this section for each metropolitan district.

(c) Notwithstanding any other provision of law, a notice of meeting containing the information set forth in section 24-6-402 (2)(c)(III) and posted on the metropolitan district's website no less than twenty-four hours prior to such meeting satisfies the requirements of section 24-6-402 (2)(c)(III).

(d) (I) Any metropolitan district in inactive status pursuant to section 32-1-104 (3) is not required to establish, maintain, or update an official website during inactive status. A metropolitan district returning to active status shall comply with this subsection (3) within ninety days of adoption of a resolution returning to active status.

(II) Any metropolitan district that does not have the power to impose an ad valorem property tax is not required to establish, maintain, or update an official website pursuant to this subsection (3).

Source: L. 2009: Entire section added, (SB 09-087), ch. 325, p. 1731, § 1, effective September 1. **L. 2015:** (2) amended and (1)(c) added, (HB 15-1092), ch. 87, p. 251, § 3, effective August 5. **L. 2021:** (3) added, (SB 21-262), ch. 368, p. 2427, § 3, effective September 7.

32-1-104.8. Information statement regarding taxes and debt.

(1) Every special district shall record a special district public disclosure document and a map of the boundaries of the district with the county clerk and recorder of each county in which the district is located that provides the following information:

(a) The name of the district;

(b) The powers of the district as authorized by section 32-1-1004 and the district's service plan or, as appropriate, the district's statement of purpose as described in section 32-1-208, current as of the time of the filing;

(c) A statement indicating that the district's service plan or, as appropriate, the district's statement of purpose as described in section 32-1-208, which can be amended from time to time, includes a description of the district's powers and authority, and that a copy of the service plan or statement of purpose is available from the division; and

(d) The following statement:

[Name of the district] is authorized by title 32 of the Colorado Revised Statutes to use a number of methods to raise revenues for capital needs and general operations costs. These methods, subject to the limitations imposed by section 20 of article X of the Colorado constitution, include issuing debt, levying taxes, and imposing fees and

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charges. Information concerning directors, management, meetings, elections, and current taxes are provided annually in the Notice to Electors described in section 32-1-809 (1), Colorado Revised Statutes, which can be found at the district office, on the district's website, on file at the division of local government in the state department of local affairs, or on file at the office of the clerk and recorder of each county in which the special district is located.

(2) Special districts existing as of August 7, 2013, shall record the special district public disclosure document required by subsection (1) of this section on or before December 31, 2014. The disclosure document for any district organized after August 7, 2013, or for any inclusion of additional real property within an existing district, shall be recorded at the same time the decree or order confirming the action is recorded as required by section 32-1-105. The requirement to record the disclosure document may be enforced by the board of county commissioners or the governing body of any municipality that has approved the service plan of the district in the same manner as the enforcement of information reporting requirements under section 32-1-209. Notwithstanding any other provision of this section, failure to record a disclosure document does not invalidate the organization of, or change the boundaries of, a district or provide a cause of action against the district or any other person, nor does it invalidate or reduce any debt issued at any time by the district, nor does it reduce for any property the mill levy or its responsibility for the proportionate share of the district's outstanding debt.

(3) This section does not apply to any special district while it is on inactive status under section 32-1-104 (4).

(4) Nothing contained in the special district public disclosure document required by this section constitutes the basis for a title defect or creation of an unmarketable title.

(5) Recording a special district public disclosure document and map is subject to the fee payment requirements set forth in section 30-1-103 (1), C.R.S.

Source: L. 2013: Entire section added, (HB 13-1186), ch. 102, p. 324, § 2, effective August 7.

32-1-105. Notice of organization, dissolution, name change, or boundary change.

No organization, dissolution, or change in the name or boundaries of any special district shall be effective until the decree or order confirming such action, together with a description of the area concerned, is recorded by the county clerk and recorder of the county in which the organization, dissolution, or change in the name or boundaries took place. The county clerk and recorder shall notify the county assessor of any such action. A certified copy of such notice shall also be filed with the division by the county clerk and recorder.

Source: L. 81: Entire article R&RE, p. 1546, § 1, effective July 1. **L. 2015:** Entire section amended, (HB 15-1092), ch. 87, p. 251, § 4, effective August 5.

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Editor's note: (1) This section is similar to former § 32-1-104 as it existed prior to 1981.

(2) This section was amended in House Bill 81-1312. Those amendments were superseded by the repeal and reenactment of the entire article in House Bill 81-1320.

Cross references: For notice required prior to the levy of a tax by a special district, see § 39-1-110.

32-1-106. Repetitioning of elections - time limits.

(1) If, after any election for the organization or dissolution of any special district or for the inclusion of territory into a special district pursuant to section 32-1-401 (2) or for the exclusion of property within a municipality from a special district pursuant to section 32-1-502, it appears that the proposal was defeated, no new petition for the organization or dissolution, as the case may be, of such a special district embracing the same or substantially the same area and no new petition for inclusion or exclusion, as the case may be, of territory pursuant to sections 32-1-401 (2) and 32-1-502 shall be submitted again until the expiration of eight months after the date of the election at which the proposal was defeated.

(2) If, after any election submitting to the electors of any special district the proposition of creating any indebtedness of the special district, it appears that the proposition was defeated, no new proposition for creating such indebtedness of the special district shall be submitted until the expiration of five months after the date of the election at which the proposal was defeated.

Source: L. 81: Entire article R&RE, p. 1546, § 1, effective July 1. **L. 94:** Entire section amended, p. 1195, § 99, effective July 1.

Editor's note: This section is similar to former § 32-1-105 as it existed prior to 1981.

32-1-107. Service area of special districts.

(1) A special district may be entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and a special district may consist of noncontiguous tracts or parcels of property.

(2) Except as provided in subsection (3) of this section, no special district may be organized wholly or partly within an existing special district providing the same service. Nothing in this subsection (2) shall prevent a special district providing different services from organizing wholly or partly within an existing special district. Except as provided in subsection (3) of this section, a metropolitan district may be organized wholly or partly within an existing special district, but a metropolitan district shall not provide the same service as the existing special district.

(3) (a) For purposes of this subsection (3), "overlapping special district" means a new or existing special or metropolitan district located wholly or partly within an existing special or

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metropolitan district.

(b) An overlapping special district may be authorized to provide the same service as the existing special or metropolitan district that the overlapping special district overlaps or will overlap if:

(I) Where the service plan of such overlapping special district is subject to approval by the board of county commissioners, the board of county commissioners of the county or counties in which the overlapping territory is located approves by resolution the inclusion of such service as part of the service plan of said overlapping special district; and

(II) Where the service plan of such overlapping special district is subject to the approval of the governing body of a municipality, the governing body of any municipality that has adopted a resolution of approval of the overlapping special district pursuant to section 32-1-204.5 (1)(a) or 32-1-204.7 approves by resolution the inclusion of such service as part of the service plan of said overlapping special district; and

(III) The improvements or facilities to be financed, established, or operated by the overlapping special district for the provision of the same service as the existing special or metropolitan district do not duplicate or interfere with any other improvements or facilities already constructed or planned to be constructed within the portion of the existing special or metropolitan district that the overlapping special district overlaps or will overlap; and

(IV) The board of directors of any special district or metropolitan district authorized to provide a service within the boundaries of the overlapping area consents to the overlapping special district providing the same service.

(c) Nothing in this subsection (3) shall be construed to encourage the unnecessary proliferation, duplication, overlapping, or fragmentation of special or metropolitan districts.

Source: L. 81: Entire article R&RE, p. 1546, § 1, effective July 1. **L. 97:** (2) amended and (3) added, p. 1415, § 1, effective June 3. **L. 2003:** (3)(b)(II) amended, p. 1315, § 1, effective August 6.

Editor's note: This section is similar to former § 32-3-103 (1) and (2) as it existed prior to 1981.

ANNOTATION

Law reviews. For article, "Survey of Colorado Tax Liens", see 14 Colo. Law. 1765 (1985).

Agricultural property previously excluded from a recreational district may be reincluded within that district when the property use changes to residential and upon proper notice to property owners as required in this section, notwithstanding the fact that the change in use occurred seven years earlier and the property could have been reincluded in the district at that time. Front Range Partners v. Hyland Hills

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Metro., 706 P.2d 1279 (Colo. 1985).

32-1-108. Correction of faulty notices.

In any case where a notice is provided for in this article, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated; but the court, in that case, shall order due notice to be given and shall continue the hearing until such time as notice has been properly given, and thereupon it shall proceed as though notice had been properly given in the first instance.

Source: L. 81: Entire article R&RE, p. 1546, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-109. Early hearings.

All cases in which there arises a question of the validity of the organization of a special district or a question of the validity of any proceeding under this article shall be advanced as a matter of immediate public interest and concern and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this article.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-110. Construction with other laws.

If any provisions of this article are inconsistent with the provisions of any other law, the provisions of this article 1 control; except that the water conservation policy set forth in section 37-60-126 (11) applies to all land within a special district that is not used as a playing surface for organized sports activities.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1. **L. 2019:** Entire section amended, (HB 19-1050), ch. 25, p. 84, § 2, effective March 7.

Editor's note: This section is similar to former § 32-4-131 as it existed prior to 1981.

32-1-111. Validation of special districts - bonds.

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The organization pursuant to law of any special district, by decree of a court of competent jurisdiction entered prior to July 1, 1981, and the obligations incurred by and the bonds of such districts issued prior to July 1, 1981, and the proceedings related thereto, are hereby validated.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-112. Validation of boundaries of metropolitan districts.

All changes or purported changes to the corporate boundaries of existing metropolitan districts, which changes were initiated prior to March 1, 1981, and are completed prior to July 1, 1981, are hereby validated notwithstanding any lack of power or authority, other than constitutional. Such boundary changes shall be the valid boundaries of the respective districts in accordance with their terms and authorization proceedings. This section shall not operate to validate any boundary change which was determined in any legal proceedings to be illegal, void, or ineffective prior to March 1, 1981, or any boundary change the validity of which is the subject of a legal proceeding instituted prior to March 1, 1981.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

32-1-113. Liberal construction.

This article, being necessary to secure the public health, safety, convenience, and welfare, shall be liberally construed to effect its purposes.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: This section is similar to former §§ 32-1-111 and 32-4-130 as they existed prior to 1981.

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PART 2
CONTROL ACT

Law reviews: For article, "Metropolitan District Service Plans: An Overview of Municipal Review", see 33 Colo. Law. 63 (April 2004).

32-1-201. Applicability.

This part 2 shall be applicable to any petition for the organization of any proposed special district filed in any district court of competent jurisdiction, except where a petition for the organization of a special district confined exclusively within the boundaries of any existing municipality has been approved by a resolution of the governing body of the municipality.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-203 as it existed prior to 1981.

ANNOTATION

Law reviews. For article, "1974 Land Use Legislation in Colorado", see 51 Den. L.J. 467 (1974).

32-1-202. Filing of service plan required - report of filing - contents - fee.

(1) (a) Persons proposing the organization of a special district, except for a special district that is contained entirely within the boundaries of a municipality and subject to the provisions of section 32-1-204.5, shall submit a service plan to the board of county commissioners of each county that has territory included within the boundaries of the proposed special district prior to filing a petition for the organization of the proposed special district in any district court. The service plan shall be filed with the county clerk and recorder for the board of county commissioners at least ten days prior to a regular meeting of the board of county commissioners, the division, and the state auditor. Within five days after the filing of any service plan, the county clerk and recorder, on behalf of the board of county commissioners, shall report to the division on forms furnished by the division the name and type of the proposed special district for which the service plan has been filed. If required by county policy adopted pursuant to the procedure provided in section 30-28-112, C.R.S., the service plan shall be referred to the planning commission which shall consider and make a recommendation on the service plan to the board of county commissioners within thirty days after the plan was filed with the county clerk and recorder. At the next regular meeting of the board of county commissioners that is held at least ten days after the final planning commission action on the service plan, the board of county

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commissioners shall set a date within thirty days of the meeting for a public hearing on the service plan of the proposed special district. The board of county commissioners shall provide written notice of the date, time, and location of the hearing to the division. The board of county commissioners may continue the hearing for a period not to exceed thirty days unless the proponents of the special district and the board agree to continue the hearing for a longer period.

(b) Notwithstanding the requirements of subsection (1)(a) of this section, the service plan of a proposed health service district, health assurance district, or early childhood development service district shall not be referred to the county planning commission for consideration or recommendations. At the next regular meeting of the board of county commissioners that is held at least ten days after the filing of the service plan with the county clerk and recorder, the board of county commissioners shall set a date within thirty days of such filing for a public hearing on the service plan of the proposed district. The board of county commissioners shall provide written notice of the meeting pursuant to subsection (1)(a) of this section.

(2) The service plan shall contain the following:

(a) A description of the proposed services;

(b) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207 or 29-1-302, C.R.S. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners or the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.

(c) A preliminary engineering or architectural survey showing how the proposed services are to be provided;

(d) A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district;

(e) A general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed special district are compatible with facility and service standards of any county within which all or any portion of the proposed special district is to be located, and of municipalities and special districts which are interested parties pursuant to section 32-1-204 (1);

(f) A general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;

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(g) A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan;

(h) Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable, is met;

(i) Such additional information as the board of county commissioners may require by resolution on which to base its findings pursuant to section 32-1-203;

(j) For a mental health-care service district, any additional information required by section 32-17-107 (2) that is not otherwise required by paragraphs (a) to (i) of this subsection (2);

(k) For a health assurance district, any additional information required by section 32-19-106 (2) that is not otherwise required by paragraphs (a) to (i) of this subsection (2);

(l) For an early childhood development service district, any additional information required by section 32-21-105 (2) that is not otherwise required by subsections (2)(a) to (2)(i) of this section.

(2.1) No service plan shall be approved if a petition objecting to the service plan and signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total valuation for assessment of all taxable real and personal property to be included in such district, is filed with the board of county commissioners no later than ten days prior to the hearing under section 32-1-204, unless such property has been excluded by the board of county commissioners under section 32-1-203 (3.5).

(3) Each service plan filed shall be accompanied by a processing fee set by the board of county commissioners not to exceed five hundred dollars, which shall be deposited into the county general fund; except that the board of county commissioners may waive such fee. Such processing fee shall be utilized to reimburse the county for reasonable direct costs related to processing such service plan and the hearing prescribed by section 32-1-204, including the costs of notice, publication, and recording of testimony. If the board of county commissioners determines that special review of the service plan is required, the board may impose an additional fee to reimburse the county for reasonable direct costs related to such special review. If the board imposes such an additional fee, it shall not be less than five hundred dollars, and it shall not exceed one one-hundredth of one percent of the total amount of the debt to be issued by the district as indicated in the service plan or the amended service plan or ten thousand dollars, whichever is less. The board may waive all or any portion of the additional fee.

(4) In the case of a proposed health service district, submission to the board of county commissioners by the petitioners of a license or certificate of compliance or evidence of a

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pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with subsection (2) of this section.

Source: L. 81: Entire article R&RE, p. 1547, § 1, effective July 1. **L. 82:** (1) amended, p. 491, § 1, effective February 19. **L. 85:** (1) amended, (2) R&RE, and (4) added, pp. 1098, 1099, §§ 1-3, effective May 3; (2.1) added, p. 1104, § 1, effective July 1. **L. 86:** (2)(b) amended, p. 1030, § 13, effective January 1, 1987. **L. 90:** (3) amended, p. 1452, § 10, effective July 1. **L. 91:** (1), (2)(b), and (3) amended, p. 781, § 3, effective June 4. **L. 94:** (4) amended, p. 2802, § 566, effective July 1. **L. 96:** (4) amended, p. 473, § 8, effective July 1. **L. 2005:** (2)(j) added, p. 1035, § 2, effective June 2. **L. 2007:** (1) amended and (2) (k) added, pp. 1186, 1187, §§ 2, 3, effective July 1. **L. 2019:** (1)(b) amended and (2)(l) added, (HB 19-1052), ch. 72, p. 257, § 2, effective August 2.

Editor's note: This section is similar to former § 32-1-204 as it existed prior to 1981.

ANNOTATION

Excess mill levy was illegal under subsection (2)(b) of this section and §§ 32-1-204 and 29-1-302. Under subsection (2)(b), before a special district can be organized, the board of county commissioners must receive and approve a special district service plan. This subsection sets an upper limit on operating revenue derived from property taxes, subject to authorization to materially exceed this value. If mill levy caps were unenforceable, the phrase "which shall not be materially exceeded as authorized" in subsection (2)(b) would be meaningless. Prospect 34, LLC v. Gunnison County Bd., 2015 COA 160, 363 P.3d 819.

32-1-203. Action on service plan - criteria.

(1) The board of county commissioners of each county which has territory included within the proposed special district, other than a proposed special district which is contained entirely within the boundaries of a municipality, shall constitute the approving authority under this part 2 and shall review any service plan filed by the petitioners of any proposed special district. With reference to the review of any service plan, the board of county commissioners has the following authority:

(a) To approve without condition or modification the service plan submitted;

(b) To disapprove the service plan submitted;

(c) To conditionally approve the service plan subject to the submission of additional information relating to or the modification of the proposed service plan.

(2) The board of county commissioners shall disapprove the service plan unless evidence satisfactory to the board of each of the following is presented:

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(a) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.

(b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.

(c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.

(d) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

(2.5) The board of county commissioners may disapprove the service plan if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

(a) Adequate service is not, or will not be, available to the area through the county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

(b) The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party under section 32-1-204 (1).

(c) The proposal is in substantial compliance with a master plan adopted pursuant to section 30-28-106, C.R.S.

(d) The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area.

(e) The creation of the proposed special district will be in the best interests of the area proposed to be served.

(3) The board of county commissioners may conditionally approve the service plan of a proposed special district upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in subsection (2) of this section. Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the findings of the board of county commissioners.

(3.5) (a) The board of county commissioners may exclude territory from a proposed special district prior to approval of the service plan submitted by the petitioners of a proposed special district. The petitioners shall have the burden of proving that the exclusion of the property is not in the best interests of the proposed special district. Any person owning property in the proposed special district who requests that his or her property be excluded from the special district prior to approval of the service plan shall submit the request to the board of county commissioners no later than ten days prior to the hearing held under section 32-1-204, but the board of county

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commissioners shall not be limited in its action with respect to exclusion of territory based upon the request. Any request for exclusion shall be acted upon before final action of the county commissioners under section 32-1-205.

(b) Notwithstanding subsection (3.5)(a) of this section, if the service plan submitted by the petitioners of a proposed special district is for a health service district, health assurance district, or early childhood development service district, the board of county commissioners shall not accept or act upon the request of a person owning property in the proposed special district that his or her property be excluded from the special district.

(4) The findings of the board of county commissioners shall be based solely upon the service plan and evidence presented at the hearing by the petitioners, planning commission, and any interested party.

(5) In the case of a proposed health service district, submission to the board of county commissioners by the petitioners of a license or certificate of compliance or evidence of a pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with subsections (2) and (2.5) of this section.

Source: L. 81: Entire article R&RE, p. 1548, § 1, effective July 1. **L. 85:** (1) amended, (2) R&RE, and (2.5) and (5) added, pp. 1099, 1100, §§ 4, 5, effective May 3; (3.5) added, p. 1104, § 2, effective July 1. **L. 94:** (5) amended, p. 2802, § 567, effective July 1. **L. 96:** (5) amended, p. 473, § 9, effective July 1. **L. 2007:** (3.5) amended, p. 1187, § 4, effective July 1. **L. 2019:** (3.5)(b) amended, (HB 19-1052), ch. 72, p. 258, § 3, effective August 2.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-204. Public hearing on service plan - procedures - decision.

(1) The board of county commissioners shall provide written notice of the date, time, and location of the hearing to the petitioners and the governing body of any existing municipality or special district that has levied an ad valorem tax within the next preceding tax year and that has boundaries within a radius of three miles of the proposed special district boundaries, which governmental units shall be interested parties for the purposes of this part 2. The board of county commissioners shall make publication of the date, time, location, and purpose of the hearing, the first of which shall be at least twenty days prior to the hearing date. The board of county commissioners shall include in the notice a general description of the land contained within the boundaries of the proposed special district and information outlining methods and procedures pursuant to section 32-1-203 (3.5) concerning the filing of a petition for exclusion of territory; except that, if the hearing is to review a service plan for a health service district, health assurance district, or early childhood development service district, the notice shall not include information

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regarding filing a petition for exclusion of territory. The publications shall constitute constructive notice to the residents and property owners within the proposed special district who shall also be interested parties at the hearing.

(1.5) Not more than thirty days nor less than twenty days prior to the hearing held pursuant to this section, the petitioners for the organization of the special district shall send letter notification of the hearing to the property owners within the proposed special district as listed on the records of the county assessor on the date requested unless the petitioners represent one hundred percent of the property owners. The notification shall indicate that it is a notice of a hearing for the organization of a special district and shall indicate the date, time, location, and purpose of such hearing, a reference to the type of special district, the maximum mill levy, if any, or stating that there is no maximum that may be imposed by the proposed special district, and procedures for the filing of a petition for exclusion pursuant to section 32-1-203 (3.5). Except when no mailing is required, the mailing of the letter notification to all addresses or post office box addresses within the proposed special district shall constitute a good-faith effort to comply with this subsection (1.5), and failure to notify all electors thereby shall not provide grounds for a challenge to the hearing being held.

(2) (a) If there is a county planning commission or a regional planning commission in lieu thereof, the service plan submitted by the petitioners for the organization of the proposed special district shall be delivered by the county clerk and recorder to such planning commission. The county planning commission or regional planning commission shall study such service plan and present its recommendations consistent with this part 2 to the board of county commissioners within thirty days following the filing of the service plan with the county clerk and recorder.

(b) Notwithstanding subsection (2)(a) of this section, the service plan of a proposed health service district, health assurance district, or early childhood development service district shall not be delivered to the planning commission for study or recommendations unless specifically requested by the petitioners. If the petitioners do not request that the service plan be delivered to the planning commission, the clerk and recorder shall deliver the service plan to the board of county commissioners and the planning commission shall not be required to study the service plan or to present recommendations to the board of county commissioners pursuant to subsection (2)(a) of this section.

(3) The hearing held by the board of county commissioners shall be open to the public, and a record of the proceedings shall be made. All interested parties as defined in this section shall be afforded an opportunity to be heard under such rules of procedure as may be established by the board of county commissioners. Any testimony or evidence which in the discretion of the board of county commissioners is relevant to the organization of the proposed special district shall be considered.

(4) Within twenty days after the completion of the hearing, the board of county commissioners shall advise the petitioners for the organization of the proposed special district in

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writing of its action on the service plan. If the service plan is approved as submitted, a resolution of approval shall be issued to the petitioners. If the service plan is disapproved, the specific detailed reasons for such disapproval shall be set forth in writing. If the service plan is conditionally approved, the changes or modifications to be made in, or additional information relating to, the service plan, together with the reasons for such changes, modifications, or additional information, shall also be set forth in writing, and the proceeding shall be continued until such changes, modifications, or additional information is incorporated in the service plan. Upon the incorporation of such changes, modifications, or additional information in the service plan of the proposed special district, the board of county commissioners shall issue a resolution of approval to the petitioners.

Source: L. 81: Entire article R&RE, p. 1549, § 1, effective July 1. **L. 85:** (1.5) added, p. 1106, § 1, effective January 1, 1986. **L. 91:** (1), (1.5), and (2) amended, p. 782, § 4, effective June 4. **L. 96:** (1.5) amended, p. 309, § 7, effective April 15. **L. 2007:** (1) and (2) amended, p. 1188, § 5, effective July 1. **L. 2019:** (1) and (2)(b) amended, (HB 19-1052), ch. 72, p. 258, § 4, effective August 2.

Editor's note: This section is similar to former § 32-1-208 as it existed prior to 1981.

ANNOTATION

Excess mill levy was illegal under subsection (1.5) of this section and §§ 32-1-202 and 29-1-302. Subsection (1.5) contemplates the existence of a "maximum mill levy". The section sets out notice requirements for hearings on proposed taxes. If the general assembly did not intend for mill levy caps to be enforceable, the statute would not need to mandate notice of the maximum mill levy. Prospect 34, LLC v. Gunnison County Bd., 2015 COA 160, 363 P.3d 819.

32-1-204.5. Approval by municipality.

(1) No special district shall be organized if its boundaries are wholly contained within the boundaries of a municipality or municipalities, except upon adoption of a resolution of approval by the governing body of each municipality. The information required and criteria applicable to such approval shall be the information required and criteria set forth in sections 32-1-202 (2) and 32-1-203 (2). With reference to the review of any service plan, the governing body of each municipality has the following authority:

(a) To approve without condition or modification, the service plan submitted;

(b) To disapprove the service plan submitted;

(c) To conditionally approve the service plan subject to the submission of additional information relating to, or the modification of, the proposed service plan or by agreement with

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the proponents of the proposed service plan.

(2) In the case of a proposed health service district, submission to the governing body of the municipality of a license or certificate of compliance or evidence of a pending application for a license or certificate of compliance issued by the department of public health and environment shall constitute compliance with the requirements of sections 32-1-202 (2) and 32-1-203 (2) and (2.5) as required by subsection (1) of this section.

Source: L. 85: Entire section added, p. 1101, § 6, effective May 3. **L. 94:** (2) amended, p. 2802, § 568, effective July 1. **L. 96:** (2) amended, p. 473, § 10, effective July 1.

32-1-204.7. Approval by an annexing municipality.

(1) If a special district that was originally approved by a board of county commissioners becomes wholly contained within the boundaries of a municipality or municipalities by annexation or boundary adjustment, the governing body of the special district may petition the governing body of any such municipality to accept a designation as the approving authority for the special district. The municipality may accept the designation through the adoption of a resolution of approval by the governing body of the municipality.

(2) Upon the adoption of the resolution by the governing body of any municipality pursuant to subsection (1) of this section, all powers and authorities vested in the board of county commissioners pursuant to this article shall be transferred to the governing body of the municipality, which shall constitute the approving authority for the special district for all purposes under this article.

Source: L. 2003: Entire section added, p. 1315, § 2, effective August 6.

32-1-205. Resolution of approval required.

(1) A petition for the organization of a special district filed in any district court of competent jurisdiction pursuant to the provisions of section 32-1-301 shall be accompanied by a resolution approving the service plan of the proposed special district by the board of county commissioners of each county where the territory of the proposed special district lies or, where required pursuant to section 32-1-204.5, by a resolution of approval by the governing body of each municipality. If the boundaries of a proposed special district include territory within two or more counties, a resolution approving the service plan for such special district shall be required from the board of county commissioners of each county which has territory included in the proposed special district; but the board of county commissioners of each of the respective counties, in their discretion, may hold a joint hearing on the proposed special district in accordance with section 32-1-204.

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(2) Except as provided in section 32-1-206, no petition for the organization of a special district shall be considered by any court in this state without the resolution of approval and the service plan required by this part 2. The approved service plan and the resolution of approval required by this part 2 shall be incorporated by reference in and appended to the order establishing the special district after all other legal procedures for the organization of the proposed special district have been complied with.

Source: L. 81: Entire article R&RE, p. 1550, § 1, effective July 1. **L. 85:** (1) amended, p. 1101, § 7, effective May 3. **L. 91:** (1) amended, p. 783, § 5, effective June 4.

Editor's note: This section is similar to former §§ 32-1-206 and 32-1-209 (1) as they existed prior to 1981.

ANNOTATION

Change from sanitation district to metropolitan district is organization of a new and different special district, not just a mechanical name change. Therefore, approval of the service plan for new district is required by the boards of county commissioners of all counties within the district's boundaries. In re Org. of Upper Bear Creek, 682 P.2d 61 (Colo. App. 1983), aff'd on other grounds, 715 P.2d 799 (Colo. 1986).

Authority of city council to approve initial petition for formation of quasi-municipal corporation does not constitute unconstitutional delegation of power because such authority constitutes an exercise of city's police power, which includes implied standard of "reasonableness", and additional procedural steps exist pursuant to this act before such district may be formed. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990) (decided under law in effect prior to 1985 amendment).

32-1-206. Judicial review.

(1) If the petitioners for the organization of a proposed special district fail to secure such resolution of approval in the first instance or on remand from any board of county commissioners or, where required pursuant to section 32-1-204.5, from the governing body of any municipality, the petitioners may request the court to review such action. If the court determines such action to be arbitrary, capricious, or unreasonable, the court shall remand the matter back to the board of county commissioners or to the governing board of the municipality for further action with specific direction as necessary to avoid the arbitrary, capricious, or unreasonable result. Another public hearing shall be held with notice to interested parties as defined in section 32-1-204 (1).

(2) If the service plan is approved by the board of county commissioners, any interested party as defined in section 32-1-204 (1), if such party had appeared and presented its objections before the board of county commissioners, shall be given notice and have the right to appear and be

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heard at the hearing on the court petition for the organization of the special district, and the court may dismiss the court petition upon a determination that the decision of the board of county commissioners was arbitrary, capricious, or unreasonable.

Source: L. 81: Entire article R&RE, p. 1550, § 1, effective July 1. **L. 91:** (1) amended, p. 783, § 6, effective June 4.

Editor's note: This section is similar to former § 32-1-209 (1) as it existed prior to 1981.

32-1-207. Compliance - modification - enforcement.

(1) Upon final approval by the court for the organization of the special district, the facilities, services, and financial arrangements of the special district shall conform so far as practicable to the approved service plan.

(2) (a) After the organization of a special district pursuant to the provisions of this part 2 and part 3 of this article, material modifications of the service plan as originally approved may be made by the governing body of such special district only by petition to and approval by the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 in substantially the same manner as is provided for the approval of an original service plan; but the processing fee for such modification procedure shall not exceed two hundred fifty dollars. Such approval of modifications shall be required only with regard to changes of a basic or essential nature, including but not limited to the following: Any addition to the types of services provided by the special district; a decrease in the level of services; a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area. Approval for modification shall not be required for changes necessary only for the execution of the original service plan or for changes in the boundary of the special district; except that the inclusion of property that is located in a county or municipality with no other territory within the special district may constitute a material modification of the service plan or the statement of purposes of the special district as set forth in section 32-1-208. In the event that a special district changes its boundaries to include territory located in a county or municipality with no other territory within the special district, the special district shall notify the board of county commissioners of such county or the governing body of the municipality of such inclusion. The board of county commissioners or the governing body of the municipality may review such inclusion and, if it determines that the inclusion constitutes a material modification, may require the governing body of such special district to file a modification of its service plan in accordance with the provisions of this subsection (2).

(b) Except as otherwise described in paragraph (d) of this subsection (2), a special district shall not furnish domestic water or sanitary sewer service directly to residents and property owners in unincorporated territory located in a county that has not approved the special district's

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service plan unless the special district notifies the board of county commissioners of the county of its plan to furnish domestic water or sanitary sewer service directly to residents and property owners in the county and receives approval from the board to do so. Within forty-five days of receiving the notification, the board may review the special district's planned action and may, in its own discretion and following notice by the board, require a public hearing prior to giving approval of the planned action, prior to which hearing the governing body of the special district shall provide such information and data as the board reasonably requests. Failure to provide information as requested by the board is grounds for the board to delay the public hearing until the board receives the information. The board shall either approve or deny the proposed action within one hundred twenty days of the public hearing.

(c) Before approving a planned special district action described in paragraph (b) of this subsection (2), the board of county commissioners of a county shall, not less than forty-five days prior to the first meeting of the board at which the approval specified in paragraph (b) of this subsection (2) may be given, provide public notice in the manner that the county requires of the possible approval within the newly described area to be served. The notice is required to include specific notification that any property owner wishing to have his or her property excluded from the proposed area to be served shall, not later than forty days from the first public notice, request that his or her property be excluded from the proposed area to be served by the special district. The board is not limited in its action with respect to exclusion of territory based on the request. A request for exclusion shall include a legal description of the property subject to the request, and the board shall act upon the request before taking final action on the request for approval pursuant to paragraph (b) of this subsection (2).

(d) The requirements detailed in paragraphs (b) and (c) of this subsection (2) do not apply in the following circumstances:

(I) A special district provides domestic water or sanitary sewer service only to private property owners pursuant to written agreement between the special district and the property owners;

(II) A special district provides domestic water or sanitary sewer service within the boundaries of another governmental entity, including, without limitation, a city, a municipality, or another special district, pursuant to an intergovernmental agreement;

(III) A special district provides any storm drainage or storm sewer services or facilities within the county; or

(IV) Domestic water service and sanitary sewer service is being provided, or a water or sanitary sewer service area extension has been approved by the county into which the service area is to be expanded, within unincorporated territory located in the county as of May 11, 2012.

(3) (a) Any material departure from the service plan as originally approved or, if the same has been modified, from the service plan as modified, which constitutes a material modification

thereof as set forth in subsection (2) of this section, may be enjoined by the court approving the organization of such special district upon its own motion, upon the motion of the board of county commissioners or governing body of a municipality from which a resolution of approval is required by this part 2, or upon the motion of any interested party as defined in section 32-1-204 (1).

(b) No action may be brought to enjoin the construction of any facility, the issuance of bonds or other financial obligations, the levy of taxes, the imposition of rates, fees, tolls and charges, or any other proposed activity of the special district unless such action is commenced within forty-five days after the special district has published notice of its intention to undertake such activity. Such notice shall describe the activity proposed to be undertaken by the special district and provide that any action to enjoin such activity as a material departure from the service plan must be brought within forty-five days from publication of the notice. The notice shall be published one time in a newspaper of general circulation in the district. The district shall also provide notice to the district court. On or before the date of publication of the notice, the district shall also mail notice to the board of county commissioners or governing body of a municipality from which a resolution is required by this part 2.

(c) (I) Any special district created after July 1, 2000, shall file not more than once a year a special district annual report for the preceding calendar year. Unless the requirement is waived or otherwise requested by an earlier date by the board of county commissioners or by the governing body of the municipality in which a special district is wholly or partially located, commencing in 2023 for the 2022 calendar year, the annual report must be provided in accordance with this subsection (3)(c) by October 1 of each year. The annual report must be electronically filed with the governing body that approved the service plan or, if the jurisdiction has changed due to annexation into a municipality, the current governing body with jurisdiction over the special district, the division, and the state auditor, and such report must be electronically filed with the county clerk and recorder for public inspection, and a copy of the report must be made available by the special district on the special district's website pursuant to section 32-1-104.5 (3).

(II) The report required by this subsection (3)(c) must include, as applicable for the reporting year, but shall not be limited to:

(A) Boundary changes made;

(B) Intergovernmental agreements entered into or terminated with other governmental entities;

(C) Access information to obtain a copy of rules and regulations adopted by the board;

(D) A summary of litigation involving public improvements owned by the special district;

(E) The status of the construction of public improvements by the special district;

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(F) A list of facilities or improvements constructed by the special district that were conveyed or dedicated to the county or municipality;

(G) The final assessed valuation of the special district as of December 31 of the reporting year;

(H) A copy of the current year's budget;

(I) A copy of the audited financial statements, if required by the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, or the application for exemption from audit, as applicable;

(J) Notice of any uncured defaults existing for more than ninety days under any debt instrument of the special district; and

(K) Any inability of the special district to pay its obligations as they come due under any obligation which continues beyond a ninety-day period.

(III) Special districts operating under a consolidated service plan or serving the same community may file a consolidated annual report setting forth the information contained in this subsection (3)(c) for each of the special districts. The board of county commissioners or the governing body of the municipality may review the annual reports in a regularly scheduled public meeting, and such review must be included as an agenda item in the public notice for such meeting. A special district is not required to file an annual report for any year in which the special district was in inactive status for the entire year pursuant to section 32-1-104 (3).

(d) The state auditor shall review the annual report and report any apparent decrease in the financial ability of the district to discharge its existing or proposed indebtedness in accordance with the service plan to the division. In such event, the division shall confer with the board of the special district and the board of county commissioners or the governing body of the municipality regarding such condition. The division may establish a standard form for the annual report that the board of a special district may elect to use.

(4) In the case of a health service district, a change in service by the district is not deemed material unless the change affects the license or certificate of compliance issued by the department of public health and environment. A health service district is exempt from subsection (3)(b) and (3)(c) of this section.

Source: L. 81: Entire article R&RE, p. 1551, § 1, effective July 1. **L. 85:** (3) amended and (4) added, p. 1102, §§ 8, 9, effective May 3. **L. 90:** (2) amended, p. 1452, § 11, effective July 1. **L. 91:** (2) and (3)(c) amended and (3)(d) added, p. 784, § 7, effective June 4. **L. 94:** (4) amended, p. 2803, § 569, effective July 1. **L. 96:** (4) amended, p. 473, § 11, effective July 1. **L. 2003:** (2) and (3)(d) amended, p. 1316, § 3, effective August 6. **L. 2009:** (3)(d) amended, (SB 09-087), ch. 325,

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p. 1732, § 2, effective September 1. **L. 2012:** (2) amended, (HB 12-1239), ch. 175, p. 628, § 1, effective May 11. **L. 2021:** (3)(c), (3)(d), and (4) amended, (SB 21-262), ch. 368, p. 2428, § 4, effective September 7.

Editor's note: This section is similar to former § 32-1-209 as it existed prior to 1981. For a detailed comparison, see the table located in the back of the index.

ANNOTATION

Statute not applicable to special districts organized under law preceding the 1965 Special District Control Act. Senior Corp. v. Bd. of Assessment Appeals, 702 P.2d 732 (Colo. 1985).

This section contains no procedure for "reorganization", and in the absence of any legislatively created procedure for such, the court will not superimpose a judicially crafted "reorganization" procedure. Upper Bear Creek v. Bd. of County Comm'rs, 715 P.2d 799 (Colo. 1986).

When determining whether there was a "material modification", the word "shall" in the service plan is part of the phrase "shall have the power and authority to finance, design, construct, acquire, install, maintain and provide services" and cannot be construed to relate to the infinitive verb forms of finance, design, construct, acquire, install, maintain, and provide. Thus, "shall" does not obligate the special district to acquire or operate the plan, but, instead, grants unconditional authority to the district to do so. Indian Mtn. v. Indian Mtn. Metro., 2016 COA 118M, 412 P.3d 881.

It is a material modification of a service plan when a special district expands its sanitation service authority to include water service and thus, pursuant to subsection (2), approval by the boards of county commissioners of the counties in which the special district is located is required. Upper Bear Creek v. Bd. of County Comm'rs, 715 P.2d 799 (Colo. 1986).

This section requires ultimate rather than delegated action by the board of county commissioners for a material modification of a service plan. Approval from other county entities, such as the county attorney, the county planning commission, and the county community and economic development director, do not constitute approval from the board of county commissioners. Bill Barrett Corp. v. Lembke, 2018 COA 134, 488 P.3d 390, aff'd on other grounds, 2020 CO 73, 474 P.2d 46.

District's geographic shifts, failure to implement services articulated in the service plan, and action to expand the service constituted material modifications to the service plan. Accordingly, the district must give notice to and seek approval for the modifications. Bill Barrett Corp. v. Sand Hills Metro., 2016 COA 144, 411 P.3d 1086.

The board of county commissioners' approval was needed for material modification related to unincorporated area of a district whose original plan required approval only by the town within which it was contained entirely. Bill Barrett Corp. v. Sand Hills Metro., 2016 COA 144, 411 P.3d 1086.

A service plan providing that the special district "will" build specified recreation facilities obligates the special district to build those facilities unless the special district can demonstrate that plan compliance is no longer practicable. Plains Metro. Dist. v. Ken-Caryl Ranch, 250 P.3d 697 (Colo. App. 2010).

Special district's violation of its service plan can be remedied under subsection (3)(a). Although the claims alleging that the special district did not comply with its duty did not specifically allege

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a statutory cause of action or cite provisions governing "compliance" with and judicial "enforcement" of service plans, the substance of the requested relief was clear and consistent with the statute. Plains Metro. Dist. v. Ken-Caryl Ranch, 250 P.3d 697 (Colo. App. 2010).

32-1-208. Statement of purposes - districts without service plans.

(1) On or before July 1, 1986, any special district which does not have a service plan approved pursuant to this part 2 shall file a statement of purposes in the form set forth in subsection (2) of this section with the board of county commissioners of each county and governing body of each municipality which has territory included within the boundaries of the special district and with the division. The statement of purposes shall be accepted by such board of county commissioners and by such governing body of each municipality without any requirement for hearing thereon. The following documents shall be deemed to be the statement of purposes required by this section for any special district which does not have a service plan approved pursuant to this part 2 because it was at the time of organization confined exclusively within the boundaries of a municipality, and no new statement of purposes need be filed by the special district except as required by subsection (3) of this section:

(a) The petition for organization;

(b) The resolution or ordinance of the governing body of the municipality approving the special district;

(c) Any agreements between the municipality and the district; and

(d) Any plans filed with the municipality describing the services to be provided by the special district.

(2) The statement of purposes required under this section shall describe the purposes for which the special district was organized, the services and facilities provided or to be provided by the special district, and the areas served or to be served by the special district.

(3) Any statement of purposes filed by a special district pursuant to this section shall be subject to the requirements of and may be modified in the manner provided in section 32-1-207. The board shall notify the board of county commissioners or the governing body of any municipality in which the special district is wholly or partially located of any proposed increase in the indebtedness of the district.

(4) The provisions of this section shall not apply to health service districts.

Source: L. 85: Entire section added, p. 1103, § 10, effective May 3. **L. 91:** (3) amended, p. 786, § 8, effective June 4. **L. 96:** (4) amended, p. 474, § 12, effective July 1.

32-1-209. Submission of information.

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If a special district fails either to file a special district annual report pursuant to section 32-1-207 (3)(c) or to provide any information required to be submitted pursuant to section 32-1-104 (2) within nine months of the date of the request for such information, the board of county commissioners of any county or the governing body of any municipality in which the special district is located, after notice to the affected special district, may notify any county treasurer holding moneys of the special district and authorize the county treasurer to prohibit release of any such moneys until the special district complies with such requirements.

Source: L. 91: Entire section added, p. 786, § 9, effective June 4.

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PART 3
ORGANIZATION

32-1-301. Petition for organization.

(1) After approval of the service plan pursuant to section 32-1-205 or 32-1-206 or after approval of the petition by the governing body of a municipality pursuant to section 32-1-205, the persons proposing the organization of a special district may file a petition for organization in the district court vested with jurisdiction of the county in which all or part of the real property in the proposed special district is situated. The petition shall be signed by not less than thirty percent or two hundred of the taxpaying electors of the proposed special district, whichever number is smaller. Notwithstanding any other provision of law, only those signatures obtained after the approval of the service plan pursuant to section 32-1-205 or 32-1-206 or after approval of the petition by the governing body of a municipality pursuant to section 32-1-205 shall be considered by the district court in making the evidentiary finding concerning the required number of taxpaying electors of the proposed special district that is required by section 32-1-305 (1).

(2) The petition shall set forth:

(a) The type of service to be provided by the proposed special district and the name of the proposed special district, consisting of a chosen name preceding one of the following phrases:

(I) Ambulance district;

(I.1) Fire protection district;

(II) Health service district;

(III) Metropolitan district;

(IV) Park and recreation district;

(V) Sanitation district;

(VI) Water and sanitation district;

(VII) Water district;

(VIII) Tunnel district;

(IX) Mental health-care service district;

(X) Health assurance district;

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(XI) Early childhood development service district.

(b) A general description of the facilities and improvements, if any, to be constructed, installed, or purchased for the special district;

(c) A statement as to whether the proposed special district lies wholly or partly within another special district or municipality;

(d) The estimated cost of the proposed facilities and improvements;

(d.1) The estimated property tax revenues for the district's first budget year;

(e) A general description of the boundaries of the special district or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not his property is within the special district;

(f) If selected by the petitioners, a general description of the boundaries of director districts which shall have, as nearly as possible, the same number of eligible electors, which shall be as contiguous and compact as possible, and which shall be represented on the board by a director who is an eligible elector within the boundaries of the respective director district;

(g) A request for the organization of the special district;

(h) A request for the submission to the electors of the special district at the organizational election of any questions permitted to be submitted at such election pursuant to section 32-1-803.5.

(3) The petition shall be accompanied by a resolution approving the service plan as provided in section 32-1-205, unless the service plan has been approved by the court as provided in section 32-1-206 or unless such special district is confined exclusively within the boundaries of any existing municipality, and the governing body of the municipality has approved the petition for organization by resolution which shall be attached to the petition.

Source: L. 81: Entire article R&RE, p. 1551, § 1, effective July 1. **L. 83:** (2)(a)(I) R&RE and (2)(a)(I.1) added, p. 412, §§ 4, 5, effective June 1. **L. 85:** (1) amended, p. 1108, § 1, effective March 1; (2)(f) amended, p. 1083, § 2, effective July 1, 1986. **L. 86:** (2)(d.1) added, p. 1030, § 14, effective January 1, 1987. **L. 87:** (2)(a)(VIII) added, p. 1232, § 2, effective May 13. **L. 91:** (1) amended, p. 786, § 10, effective June 4. **L. 92:** (2)(f) amended, p. 875, § 107, effective January 1, 1993. **L. 93:** (2)(h) added, p. 1439, § 134, effective July 1. **L. 96:** (2)(a)(II) amended, p. 470, § 2, effective July 1. **L. 2005:** (2)(a)(IX) added, p. 1035, § 3, effective June 2. **L. 2007:** (2)(a)(X) added, p. 1189, § 6, effective July 1. **L. 2017:** (1) amended, (HB 17-1065), ch. 73, p. 232, § 3, effective August 9. **L. 2019:** (2)(a)(XI) added, (HB 19-1052), ch. 72, p. 259, § 5, effective August 2.

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Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Authority of city council to approve initial petition for formation of quasi-municipal corporation does not constitute unconstitutional delegation of power because such authority constitutes an exercise of city's police power, which includes implied standard of "reasonableness", and additional procedural steps exist pursuant to this act before such district may be formed. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990) (decided under law in effect prior to 1985 amendment).

32-1-302. Bond of petitioners.

At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court, or a cash deposit made sufficient to pay all expenses connected with the proceedings in case the organization of the special district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioner to execute or deposit the same, the petition shall be dismissed.

Source: L. 81: Entire article R&RE, p. 1552, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-303. Court jurisdiction - transfer of file - judge not disqualified.

(1) (a) The district court sitting in or for any county in this state is vested with the jurisdiction to organize special districts which may be entirely within or partly within and partly without the judicial district in which said court is located. The court in and for the county in which the petition for the organization of a special district has been filed, for all purposes of this part 3 except as otherwise provided, shall thereafter maintain and have original and exclusive jurisdiction, coextensive with the boundaries of the special district and of the property proposed to be included in said special district or affected by said special district, without regard to the usual limits of its jurisdiction.

(b) If any special district by any reason whatsoever subsequently becomes situated entirely without a judicial district, the court on its motion or upon motion of the board shall transfer the

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entire file pertaining to the special district to the district court of the judicial district in which the major portion of the special district is then located, and said district court then shall have full jurisdiction over the special district in accordance with this article as if the proceedings had originally been filed there.

(2) No judge of the court wherein such petition is filed shall be disqualified to perform any duty imposed by this part 3 by reason of ownership of property within any proposed special district.

Source: L. 81: Entire article R&RE, p. 1552, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-304. Notice of court hearing.

Except as otherwise provided in section 32-1-304.5, immediately after the filing of a petition, the court wherein the petition is filed, by order, shall fix a place and time, not less than twenty-one days nor more than forty-two days after the petition is filed, for hearing thereon. The clerk of the court shall cause notice by publication to be made of the pendency of the petition, the purposes and boundaries of the special district, and the time and place of hearing thereon. The clerk of the court shall also forthwith cause a copy of the notice to be sent by United States first-class mail or by electronic service using the e-filing system of the judicial department to the board of county commissioners of each of the several counties and to each party entitled to notice pursuant to section 32-1-206 (2). The notice must include a general description of the land contained within the boundaries of the proposed special district and information explaining methods and procedures for the filing of a petition for exclusion of territory pursuant to section 32-1-305 (3).

Source: L. 81: Entire article R&RE, p. 1553, § 1, effective July 1. **L. 91:** Entire section amended, p. 786, § 11, effective June 4. **L. 2007:** Entire section amended, p. 1189, § 7, effective July 1. **L. 2017:** Entire section amended, (HB 17-1142), ch. 66, p. 208, § 1, effective September 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For requirements for notice by publication, see part 1 of article 70 of title 24.

32-1-304.5. Court hearing not required - health service district - health assurance

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district.

(1) If the petition for organization filed with the court pursuant to section 32-1-301 is for a health service district or health assurance district, the court shall not hold a hearing or provide notice pursuant to section 32-1-304. In lieu of holding a hearing, the court shall review the petition for a health service district or health assurance district and the additional information submitted to the court pursuant to section 32-1-301. In addition, the court shall review the findings of the board of county commissioners pursuant to section 32-1-205 or the findings of the court pursuant to section 32-1-206, as applicable.

(2) The court shall complete the review of information required pursuant to subsection (1) of this section within thirty calendar days of receipt of the petition for a health service district or health assurance district. Within such period, the court shall determine whether the persons proposing the petition have complied with all of the statutory requirements for proposing a special district and that the required number of taxpaying electors of the proposed special district have signed the petition.

(3) If the court finds that the petition has not been signed and presented in conformity with this part 3, the court shall either dismiss said proceedings and adjudge the costs against the signers of the petition in the proportion it deems just and equitable or allow the petitioners an opportunity to correct any technical defects in the petition and refile the petition with the court. No appeal or other remedy shall lie from an order dismissing said proceedings. Nothing in this subsection (3) shall be construed to prevent the filing of a subsequent petition for similar improvements or for a similar special district, and the right to renew such proceedings is hereby expressly granted and authorized.

(4) The court shall not accept or act upon petitions filed by an owner of any real property within a proposed health service district or health assurance district stating reasons why the property should not be included therein and requesting that the property be excluded therefrom.

(5) If the court concludes that a petition for the organization of a health service district or health assurance district has been signed and presented in conformity with this part 3 and that the allegations of the petition are true, the court, by order duly entered of record, shall direct that the question of the organization of the special district be submitted at an election to be held for that purpose in accordance with the provisions of articles 1 to 13 of title 1, C.R.S. In such event, the provisions of section 32-1-305 (5), (6), and (7) shall apply to the election.

Source: L. 2007: Entire section added, p. 1189, § 8, effective July 1.

32-1-305. Court hearing - election - declaration of organization.

(1) Except as otherwise provided in section 32-1-304.5, on the day fixed for the hearing

provided in section 32-1-304 or at an adjournment thereof, the court shall first ascertain, from such evidence which may be adduced, that the required number of taxpaying electors of the proposed special district have signed the petition. Notwithstanding any other provision of law, only those signatures obtained after the approval of the service plan pursuant to section 32-1-205 or 32-1-206 or after approval of the petition by the governing body of a municipality pursuant to section 32-1-205 shall be considered by the district court in making the evidentiary finding that the required number of taxpaying electors of the proposed special district have signed the petition in accordance with this subsection (1).

(2) Except as otherwise provided in section 32-1-304.5, upon said hearing, if the court finds that the petition has not been signed and presented in conformity with this part 3, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in the proportion it deems just and equitable. No appeal or other remedy shall lie from an order dismissing said proceedings. Nothing in this subsection (2) shall be construed to prevent the filing of a subsequent petition for similar improvements or for a similar special district, and the right so to renew such proceedings is hereby expressly granted and authorized.

(3) Except as otherwise provided in section 32-1-304.5, anytime after the filing of the petition for the organization of a special district but no later than ten days before the day fixed for the hearing thereon, the owner of any real property within the proposed special district may file a petition with the court stating reasons why said property should not be included therein and requesting that said real property be excluded therefrom. The petition shall be duly verified and shall describe the property sought to be excluded. The court shall hear the petition and all objections thereto at the time of the hearing on the petition for organization and shall determine whether, in the best public interest, the property should be excluded or included in the proposed special district. The court shall exclude property located in any home rule municipality in respect to which a petition for exclusion has been filed by the municipality.

(4) Except as otherwise provided in section 32-1-304.5, upon the hearing, if it appears that a petition for the organization of a special district has been signed and presented in conformity with this part 3 and that the allegations of the petition are true, the court, by order duly entered of record, shall direct that the question of the organization of the special district be submitted at an election to be held for that purpose in accordance with article 13.5 of title 1.

(5) At such election the voter shall vote for or against the organization of the special district and for five electors of the district who shall constitute the board of the special district, if organized.

(6) If a majority of the votes cast at said election are in favor of the organization and the court determines the election was held in accordance with article 13.5 of title 1, the court shall declare the special district organized and give the special district the corporate name designated in the petition, by which it shall thereafter be known in all proceedings, and designate the first board elected. Thereupon the special district shall be a quasi-municipal corporation and a

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political subdivision of the state of Colorado with all the powers thereof.

(7) If an order is entered declaring the special district organized, such order shall be deemed final, and no appeal or other remedy shall lie therefrom. The entry of such order shall finally and conclusively establish the regular organization of the special district against all persons except the state of Colorado in an action in the nature of quo warranto commenced by the attorney general within thirty-five days after entry of such order declaring such special district organized and not otherwise. The organization of said special district shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this subsection (7).

Source: L. 81: Entire article R&RE, p. 1553, § 1, effective July 1. **L. 92:** (4) amended, p. 876, § 108, effective January 1, 1993. **L. 94:** (6) amended, p. 1642, § 65, effective May 31. **L. 2007:** (1), (2), (3), and (4) amended, p. 1190, § 9, effective July 1. **L. 2012:** (7) amended, (SB 12-175), ch. 208, p. 881, § 146, effective July 1. **L. 2016:** (4) and (6) amended, (SB 16-189), ch. 210, p. 783, § 81, effective June 6. **L. 2017:** (1) amended, (HB 17-1065), ch. 73, p. 232, § 4, effective August 9. **L. 2021:** (4) and (6) amended, (SB 21-160), ch. 133, p. 538, § 8, effective September 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Quo warranto action in subsection (7) is exclusive means of attacking an order declaring a special district organized if an organizational election is used. In re Org. of Upper Bear Creek, 682 P.2d 61 (Colo. App. 1983), aff'd, 715 P.2d 799 (Colo. 1986).

District court statutorily barred under subsection (7) from setting aside order creating special district based on fraud on the court. The statute is specific in providing for review of an action by a district court only in a very narrow and time-constrained procedure that did not occur here. Where the authority of the court to enter an order in the first place emanates solely from a statutory grant from the legislature, as is the case with the organization of a special district, and that statutory grant contains a limitation on the power of the court to review the order once it is entered, court must defer to the legislative determination to place a limit on the review of such an order. Marin Metro. Dist. v. Landmark Towers Ass'n, 2014 COA 40, 412 P.3d 620.

Provision relating to quo warranto action is inapposite where county is an interested and aggrieved party pursuant to §§ 32-1-203, 32-1-206, 32-1-207, and 32-1-1201. County had standing under such sections to attack court's decree. In re Org. of Upper Bear Creek, 682 P.2d 61 (Colo. App. 1983), aff'd, 715 P.2d 799 (Colo. 1986).

Constitutional challenge to subsections (4) through (6) of this section on grounds that denying corporate entities the right to vote on the formation of a special district violates the equal protection clause was premature as no petition for organization was pending before district court. State Farm v. City

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of Lakewood, 788 P.2d 808 (Colo. 1990).

32-1-305.5. Organizational election - new special district - first directors.

(1) In the order authorizing the election, the court shall name either the clerk and recorder of the county in which the district is to be or another eligible elector of the state as the designated election official responsible for the conducting of the election.

(2) At the election, the eligible electors shall vote for or against the organization of the special district and for the members of the board who will serve if the special district is organized. The terms of office of the first directors shall be as follows:

(a) In the case of a five-member board, two directors shall serve until they or their successors are elected and qualified at the next regular special district election occurring in any year following that in which the special district was organized, and three shall serve until they or their successors are elected and qualified at the second regular special district election after organization.

(b) In the case of a seven-member board, three directors shall serve until they or their successors are elected and qualified at the next regular special district election occurring in any year following that in which the special district was organized, and four shall serve until they or their successors are elected and qualified at the second regular special district election after organization.

(3) (a) Except as provided in subsection (3)(b) of this section, the basic term of office for directors, after the original terms provided in subsection (2) of this section, is four years.

(b) The terms of office of the directors elected in the regular special district elections held in 2020 and 2022 are for three years.

(4) A nomination for director to serve for either term may be made by self-nomination and acceptance form or letter, as provided in section 1-13.5-303, C.R.S., with the time and manner of filing such form or letter as directed in the order of the district court authorizing the election.

(5) If, after the results of the election are certified, the court finds that a majority of the votes cast at the election are in favor of organization, the court shall proceed with the order establishing the special district and shall issue certificates of election for the directors elected.

Source: L. 92: Entire section added, p. 876, § 109, effective January 1, 1993. **L. 99:** (4) amended, p. 448, § 1, effective August 4. **L. 2014:** (1) and (4) amended, (HB 14-1164), ch. 2, p. 70, § 30, effective February 18. **L. 2018:** (3) amended, (HB 18-1039), ch. 29, p. 331, § 4, effective August 8.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session

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Laws of Colorado 2014.

32-1-306. Filing decree.

Within thirty days after the special district has been declared organized by the court, the special district shall transmit to the county clerk and recorder in each of the counties in which the special district or a part thereof extends certified copies of the findings and the order of the court organizing said special district. The same shall be recorded by the county clerk and recorder in each county as provided in section 32-1-105. A copy of the approved service plan of the district shall be delivered to each such county clerk and recorder, who shall retain the service plan as a public record for public inspection. In addition, a copy of the service plan, together with a copy of the court's findings and order, shall be filed with the division as provided in section 32-1-105, and a map of the special district shall be filed with the county assessor in each county in which the special district or a part thereof extends and with the division according to the standards of the division. On or before January 1, 2010, a special district shall file a current, accurate map of its boundaries with the county clerk and recorder in each of the counties in which the special district or a part thereof extends. A special district shall maintain a current, accurate map of its boundaries and shall provide for such map to be on file with the county assessor, the clerk and recorder, and the division on or before January 1 of each year.

Source: L. 81: Entire article R&RE, p. 1554, § 1, effective July 1. **L. 85:** Entire section amended, p. 1020, § 6, effective July 1. **L. 2009:** Entire section amended, (SB 09-087), ch. 325, p. 1732, § 3, effective September 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For provisions concerning public records, see article 72 of title 24.

32-1-307. Park and recreation districts - metropolitan districts providing parks and recreational facilities or programs - exclusion proviso.

(1) Any provision of this part 3 to the contrary notwithstanding, no tract of land of forty acres or more used primarily and zoned for agricultural uses shall be included in any park and recreation district or in any metropolitan district providing parks or recreational facilities and programs organized under this part 3 without the written consent of the owners thereof. No personal property which is situated upon real estate not included in such district shall be included within any park and recreation or metropolitan district. If, contrary to the provisions of this section, any such tract, parcel, or personal property is included in any park and recreation or metropolitan district, the owners thereof, on petition to the court, shall be entitled to have such property excluded from such district free and clear of any contract, obligation, lien, or charge to

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which it may be liable as a part of such district.

(2) If the use or zoning of any tract of land of forty acres or more lying within the boundaries of any park and recreation district or any metropolitan district providing parks or recreational facilities and programs organized under the provisions of this part 3 has been or is changed from agricultural use or zoning to any other use or zoning designation, such lands and the personal property thereon shall no longer be excluded from said district and shall be subject to all obligations, liens, or charges of such district on and after January 1 of the year following such change in use or zoning.

(3) When there is a change of use or zoning to any other use or zoning designation and the assessor of the county in which such lands are located is notified of a change, he shall give notification of such change to the secretary of the district. The district shall mail a notice of such action to the owner of the property at the address shown for such owner in the records of the county assessor's office.

(4) The district shall petition the appropriate district court for an order including the subject lands within the district, and the court, upon examining the proof of change of such use or zoning and finding that it complies with this section, shall enter an order including said lands within the district. The district shall have a certified copy of said order recorded by the county clerk and recorder and shall file a copy with the county assessor.

Source: L. 81: Entire article R&RE, p. 1554, § 1, effective July 1. **L. 2017:** (1) and (2) amended, (HB 17-1065), ch. 73, p. 231, § 1, effective August 9.

Editor's note: This section is similar to former § 32-2-108 as it existed prior to 1981.

ANNOTATION

Mining or mineral uses are not included in exclusion for land zoned for agricultural uses for purposes of taxation. Fort Lupton Park & Recreation Dist. v. Amoco Prod. Co., 800 P.2d 1324 (Colo. App. 1990).

Subsection (2) applies to districts created before the adoption of the subsection. Jefferson Center Metro. Dist. No. 1 v. North Jeffco Metro. Recreation & Park Dist., 844 P.2d 1321 (Colo. App. 1992).

Subsection (2) does not apply only to lands already included within the district. It applies also to lands that were included within the original description but were later excluded from the district by court order. Jefferson Center Metro. Dist. No. 1 v. North Jeffco Metro. Recreation and Park Dist., 844 P.2d 1321 (Colo. App. 1992).

Subsection (2) does not restrict the authority of a district to seek inclusion of rezoned agricultural land. It does prohibit the creation of a new district within an overlapping geographical area that is served by an existing district rendering similar services. Jefferson Center Metro. Dist. No. 1 v.

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North Jeffco Metro. Recreation and Park Dist., 844 P.2d 1321 (Colo. App. 1992).

32-1-308. Applicability of article to existing districts and validation - districts being organized.

(1) The provisions of this article which become effective July 1, 1981, shall apply to all special districts existing on June 30, 1981, or organized thereafter; except that any such existing district need not obtain a name change to conform to this article and that any district may continue to operate for the purpose or purposes for which it was organized.

(2) Any proceedings for the organization of a special district which were commenced prior to July 1, 1981, may continue pursuant to the laws in effect at the time such organization was commenced until the district court has declared the district organized. Thereafter, the special district shall be subject to the provisions of this article. Any such organizational proceedings which are dismissed by the board of county commissioners or by the district court and which are recommenced after July 1, 1981, shall be governed by the provisions of this article.

Source: L. 81: Entire article R&RE, p. 1555, § 1, effective July 1.

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PART 4
INCLUSION OF TERRITORY

32-1-401. Inclusion of territory - procedure.

(1) (a) The boundaries of a special district may be altered by the inclusion of additional real property by the fee owner or owners of one hundred percent of any real property capable of being served with facilities of the special district filing with the board a petition in writing requesting that such property be included in the special district. The petition shall set forth a legal description of the property, shall state that assent to the inclusion of such property in the special district is given by the fee owner or owners thereof, and shall be acknowledged by the fee owner or owners in the same manner as required for conveyance of land.

(b) The board shall hear the petition at a public meeting after publication of notice of the filing of such petition, the place, time, and date of such meeting, the names and addresses of the petitioners, and notice that all persons interested shall appear at such time and place and show cause in writing why the petition should not be granted. The board may continue such hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any municipality or county which may be able to provide service to the real property therein described or of any person in the existing special district to file a written objection shall be taken as an assent to the inclusion of the area described in the notice.

(c) (I) The board shall grant or deny the petition, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive, except as provided in subparagraph (II) of this paragraph (c). If a municipality or county has filed a written objection to such inclusion, the board shall not grant the petition as to any of the real property to which adequate service is, or will be, available from such municipality or county within a reasonable time and on a comparable basis. If a petition is granted as to all or any of the real property therein described, the board shall make an order to that effect and file the same with the clerk of the court, and the court shall thereupon order the property to be included in the special district.

(II) A municipality or county which has filed a written objection to such inclusion and which can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the court, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious, or unreasonable.

(2) (a) In addition to the procedure specified in subsection (1) of this section, the boundaries of a special district may be altered by the inclusion of additional real property by:

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(I) Not less than twenty percent or two hundred, whichever number is smaller, of the taxpaying electors of an area which contains twenty-five thousand or more square feet of land filing a petition with the board in writing requesting that such area be included within the special district; but no single tract or parcel of property constituting more than fifty percent of the total area to be included may be included in any special district without the consent of the owner thereof; the petition shall set forth a legal and a general description of the area to be included and shall be acknowledged in the same manner as required for conveyance of land; or

(II) The board adopting a resolution proposing the inclusion of a specifically described area; but no single tract or parcel of property constituting more than fifty percent of the total area to be included may be included in any special district without the consent of the owner thereof.

(b) The board shall hear the petition or resolution at a public meeting after publication of notice of the filing of such petition or adoption of such resolution, the place, time, and date of such meeting, the names and addresses of the petitioners, if applicable, the description of the area proposed for inclusion, and notice that all persons interested and a municipality or county which may be able to provide service to the real property therein described shall appear at the time and place stated and show cause in writing why the petition should not be granted or the resolution not finally adopted. The board may continue such hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing special district to file a written objection shall be taken as an assent on his part to the inclusion of the area described in the notice.

(c) The board shall grant or deny the petition or finally adopt the resolution, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive, except as provided in paragraph (d) of this subsection (2). If a municipality or county has filed a written objection to such inclusion, the board shall not grant the petition as to any of the real property to which adequate service is, or will be, available from such municipality or county within a reasonable time and on a comparable basis.

(d) If the petition is granted or the resolution finally adopted, the board shall make an order to that effect and file the same with the clerk of the court. A municipality or county which has filed a written objection to the inclusion and which can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the court, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious, or unreasonable. The court shall direct that the question of inclusion of the area within the special district be submitted to the eligible electors of the area to be included and shall order the secretary to give published notice, as provided in part 2 of article 5 and article 13.5 of title 1, of the time and place of the election and of the question to be submitted, together with a summary of any conditions attached to the proposed inclusion. The election shall be held within the area

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sought to be included and shall be held and conducted, and the results thereof determined, in the manner provided in article 13.5 of title 1. The ballot shall be prepared by the designated election official and shall contain the following words:

"Shall the following described area become a part of the ..... district upon the following conditions, if any?

(Insert description of area)
(Insert accurate summary of conditions)

For inclusion .....
Against inclusion ....."

(e) If a majority of the votes cast at the election are in favor of inclusion and the court determines the election was held in accordance with article 13.5 of title 1, the court shall enter an order including any conditions so prescribed and making the area a part of the special district. The validity of the inclusion may not be questioned directly or indirectly in any suit, action, or proceeding, except as provided in article 11 of title 1.

(f) Nothing in this part 4 shall permit the inclusion in a district of any property which could not be included in the district at the time of its organization without the written consent of the owners thereof, unless the owners of such property shall consent in writing to the inclusion of such property in the district as prayed for in said petition or unless such property is no longer excludable pursuant to the provisions of section 32-1-307 (2).

(g) Nothing in this part 4 shall permit the inclusion in a special district of any property if a petition objecting to the inclusion and signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total valuation for assessment of all taxable real and personal property to be included, is filed with the board no later than ten days prior to the public meeting held under paragraph (b) of this subsection (2).

(3) Not more than thirty days nor less than twenty days prior to a meeting of the board held pursuant to paragraph (b) of subsection (1) of this section or paragraph (b) of subsection (2) of this section, the secretary of the special district shall send letter notification of the meeting to the property owners within the area proposed to be included within the special district as listed on the records of the county assessor on the date requested unless the petitioners represent one hundred percent of the property owners. The notification shall indicate that it is a notice of a meeting for consideration of the inclusion of real property within a special district and shall indicate the date, time, location, and purpose of the meeting, a reference to the type of special district proposed for inclusion, the maximum mill levy, if any, or stating that there is no maximum that may be imposed if the proposed area is included within the special district, and procedures for the filing of a petition for exclusion pursuant to section 32-1-203 (3.5). Except as provided in this subsection (3), the mailing of the letter notification to all addresses or post office

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box addresses within the area proposed to be included within the special district shall constitute a good-faith effort to comply with this section, and failure to notify all electors thereby shall not provide grounds for a challenge to the meeting being held.

(4) Nothing in this part 4 shall be construed to permit the inclusion in a special district of any real property located in a city and county unless the governing body of such city and county has adopted a resolution of approval authorizing such inclusion pursuant to section 32-1-204.5 or waives its right to require such resolution in its sole discretion. Any resolution of approval so adopted or waiver so given shall be appended to any petition filed pursuant to paragraph (a) of subsection (1) of this section or subparagraph (I) of paragraph (a) of subsection (2) of this section.

Source: L. 81: Entire article R&RE, p. 1555, § 1, effective July 1. **L. 85:** (2)(a)(I) amended, p. 1108, § 2, effective March 1; (2)(g) added, p. 1105, § 3, effective July 1; (3) added, p. 1106, § 2, effective January 1, 1986. **L. 91:** (3) amended, p. 787, § 12, effective June 4. **L. 92:** (2)(d) and (2)(e) amended, p. 877, § 110, effective January 1, 1993. **L. 93:** (3) amended, p. 1790, § 78, effective June 6. **L. 96:** (3) amended, p. 309, § 8, effective April 15. **L. 97:** (4) added, p. 322, § 1, effective April 14. **L. 2016:** (2)(d) and (2)(e) amended, (SB 16-189), ch. 210, p. 784, § 82, effective June 6. **L. 2021:** (2)(d) and (2)(e) amended, (SB 21-160), ch. 133, p. 539, § 9, effective September 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Enactment of new statute could not include railroad property in special park and recreation district without consent in writing by owners because the property could not be included in the district at the time of its formation without such consent and no change had occurred with respect to railroad property. Hyland Hills Park v. Denver R. Co., 850 P.2d 155 (Colo. App. 1992), aff'd, 864 P.2d 569 (Colo. 1993).

Subsection (2)(f) of this section sets forth only two ways in which previously excluded property can later be included in a district. Inclusion without consent is permitted if the property has changed from agricultural use to a different use or if the property has been rezoned; for all other property, consent of the owners is required. Hyland Hills Park & Rec. District v. D. & R.G.W.R. Co., 864 P.2d 569 (Colo. 1993).

The owner of a severed mineral estate is a fee owner for purposes of this section. Lessees of a severed mineral estate, however, are not fee owners for purposes of this section. Bill Barrett Corp. v. Lembke, 2018 COA 134, 488 P.3d 390, aff'd on other grounds, 2020 CO 73, 474 P.2d 46.

A mineral estate is not real property capable of being served with facilities of a special district pursuant to this section even though the ownership of the estate is a fee simple interest. Bill Barrett

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Corp. v. Lembke, 2018 COA 134, 488 P.3d 390, aff'd on other grounds, 2020 CO 73, 474 P.2d 46.

To include new territory in a special district through the procedure set out under subsection (1)(a), all of the owners of the surface property to be included must assent, and inclusion is only appropriate if that surface property can be served by the district. The assent of the owners or lessees of subsurface mineral estates underlying that property is not required. Bill Barrett Corp. v. Lembke, 2020 CO 73, 474 P.3d 46.

32-1-401.5. Fire protection districts - inclusion of personalty.

(1) An owner of taxable personal property, situate on real property excluded from a fire protection district, capable of being served with facilities of the special district may file with the board a petition in writing requesting that such property be included in the special district. The petition shall set forth an accurate description of the taxable personal property owned by the petitioner to be included and shall state that assent to the inclusion of such property in the special district is given by the signer, being the owner of such property. The petition shall be acknowledged in the same manner as required for conveyance of land.

(2) The board shall hear the petition at a public meeting after publication of notice of the filing of such petition, the place, time, and date of such meeting, the names and addresses of the petitioners, and that all persons interested shall appear at such time and place and show cause in writing why the petition should not be granted. The board may continue such hearing to a subsequent meeting. There shall be no withdrawal from a petition after consideration by the board, nor shall further objections be filed except in case of fraud or misrepresentation.

(3) The board shall grant or deny the petition, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive. If the petition is granted as to all or any of the property therein described, the board shall make an order to that effect and file the same with the clerk of the court, and the court shall thereupon order the property to be included in the special district.

Source: L. 82: Entire section added, p. 493, § 1, effective March 17.

32-1-402. Effect of inclusion order.

(1) The following shall be applicable to any proceeding for inclusion accomplished pursuant to this part 4:

(a) Nothing in this part 4 shall affect the validity of any area or property included or excluded from a special district by virtue of prior laws.

(b) After the date of its inclusion in a special district, such property shall be subject to all of the taxes and charges imposed by the special district and shall be liable for its proportionate share of existing bonded indebtedness of the special district; but it shall not be liable for any

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taxes or charges levied or assessed prior to its inclusion in the special district, nor shall its entry into the special district be made subject to or contingent upon the payment or assumption of any tax, rate, fee, toll, or charge, other than the taxes, rates, fees, tolls, and charges which are uniformly made, assessed, or levied for the entire special district, without the prior consent of the fee owners or approval of the electors of the area to be included.

(c) In any special district, the included property shall be liable for its proportionate share of annual operation and maintenance charges and the cost of facilities of the special district and taxes, rates, fees, tolls, or charges shall be certified and levied or assessed therefor. Nothing in this section shall prevent an agreement between a board and the owners of property sought to be included in a special district with respect to the fees, charges, terms, and conditions on which such property may be included.

(d) The change of boundaries of the special district shall not impair nor affect its organization, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

(e) The court order of any inclusion of territory accomplished pursuant to this part 4 shall be filed in accordance with the provisions of section 32-1-105.

(f) The special district's facility and service standards which are applied within the included area shall be compatible with the facility and service standards of adjacent municipalities.

Source: L. 81: Entire article R&RE, p. 1558, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

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PART 5
EXCLUSION OF TERRITORY

32-1-501. Exclusion of property by fee owners or board - procedure.

(1) The boundaries of a special district, except health service districts, may be altered by the exclusion of real property by the fee owner or owners of one hundred percent of any real property situate in the special district filing with the board a petition requesting that such real property of the fee owner or owners be excluded and taken from the special district. The petition shall set forth a legal description of the property, shall state that assent to the exclusion of the property from the special district is given by the fee owner or owners thereof, and shall be acknowledged by the fee owner or owners in the same manner as required for conveyance of land. The petition shall be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings.

(1.5) (a) In addition to the procedure specified in subsection (1) of this section, the board, through adoption of a resolution, may alter the boundaries of a fire protection district through the exclusion of real property from the district if the property to be excluded will be provided with the same service by another fire protection district or by a county fire improvement district and the board or governing body of that district has agreed by resolution to include the property into the district immediately after the effective date of the exclusion order.

(b) (I) Not more than forty-five days nor less than thirty days prior to a meeting of the board to consider final adoption of a resolution proposing property to be excluded, the secretary of the fire protection district shall send letter notification to the fee owner or owners of one hundred percent of all proposed real property to be excluded from the district as listed on the records of the county assessor on the date requested.

(II) The letter notification shall indicate that it is a notice of a meeting required to be held pursuant to subsection (2) of this section concerning the exclusion of the property from the district, shall indicate the date, time, and location of the meeting, and shall contain both a reference to the fire protection district or county fire improvement district proposed for inclusion and the current mill levy of the district, if any.

(III) The mailing of the letter notification to all addresses or post office box addresses within the area proposed to be excluded from the district shall constitute a good-faith effort to comply with this section, and failure to so notify all fee owners shall not provide grounds for a challenge to the meeting being held.

(2) The board shall hear the petition or resolution at a public meeting after publication of notice of the filing of the petition or preliminary adoption of the resolution, the place, time, and

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date of the meeting, the names and addresses of the petitioners, if applicable, a general description of the area proposed for exclusion, and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted or the resolution should not be finally adopted. The board may continue the hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing special district to file a written objection shall be taken as an assent on his or her part to the exclusion of the area described in the notice.

(3) The board shall take into consideration and make a finding regarding all of the following factors when determining whether to grant or deny the petition or to finally adopt the resolution or any portion thereof:

(a) The best interests of all of the following:

(I) The property to be excluded;

(II) The special district from which the exclusion is proposed;

(III) The county or counties in which the special district is located;

(b) The relative cost and benefit to the property to be excluded from the provision of the special district's services;

(c) The ability of the special district to provide economical and sufficient service to both the property to be excluded and all of the properties within the special district's boundaries;

(d) Whether the special district is able to provide services at a reasonable cost compared with the cost that would be imposed by other entities in the surrounding area to provide similar services in the surrounding area or by the fire protection district or county fire improvement district that has agreed to include the property to be excluded from the special district;

(e) The effect of denying the petition on employment and other economic conditions in the special district and surrounding area;

(f) The economic impact on the region and on the special district, surrounding area, and state as a whole if the petition is denied or the resolution is finally adopted;

(g) Whether an economically feasible alternative service may be available; and

(h) The additional cost to be levied on other property within the special district if the exclusion is granted.

(4) (a) (I) Except as provided in subparagraph (II) of this paragraph (a) and if the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition or resolution or some portion thereof should be excluded from

the special district, it shall order that the petition be granted or that the resolution be finally adopted, in whole or in part.

(II) (A) If the property to be excluded from the special district will be served by a special district not yet organized, the board shall not order that the petition be granted or that the resolution be finally adopted until the special district has been organized pursuant to part 3 of this article.

(B) If the property to be excluded from the special district will be served by a fire protection district or county fire improvement district as provided in subsection (1.5) of this section, the board shall not order that the petition be granted or that the resolution be finally adopted until the fire protection district or county fire improvement district has adopted a resolution agreeing to include the property in the district immediately after the effective date of the exclusion order and has filed the resolution with the court.

(C) Notwithstanding any other provision of this article to the contrary, the property to be excluded may be included within the boundaries of the proposed special district.

(b) Upon granting the petition or finally adopting the resolution, the board shall file a certified copy of the order of the board excluding the property from the district with the clerk of the court, and, except as provided in paragraph (c) of this subsection (4), the court shall order the property to be excluded from the special district and, if applicable, included into the fire protection district or county fire improvement district that has previously agreed to include the property as provided in subsection (1.5) of this section.

(c) (I) If the property to be excluded from the special district will be served by a fire protection district or county fire improvement district that has previously agreed to include the property as provided in subsection (1.5) of this section and that has a higher mill levy than the special district and after the certified copy of the order of the board excluding the property from the district is filed with the clerk of the court, the court shall direct the question of excluding the area from the special district and including it in the fire protection district or county fire improvement district with a higher mill levy to the eligible electors of the area sought to be excluded. The court shall order the secretary to give published notice, as provided in part 2 of article 5 and article 13.5 of title 1, of the time and place of the election and of the question to be submitted, together with a summary of any conditions attached to the proposed exclusion. The election shall be held within the area sought to be excluded and shall be held and conducted, and the results thereof determined, in the manner provided in article 13.5 of title 1. The ballot shall be prepared by the designated election official and shall contain the following words:

"Shall the following described area be excluded from the _____ district, which has a current mill levy of _____, and become a part of the _____ district, which has a current mill levy of _____, and upon the following conditions, if any?

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(Insert general description of area)
(Insert accurate summary of conditions)

For exclusion from _____ district and inclusion
in _____ district _____
Against exclusion from _____ district _____"

(II) If a majority of the votes cast at the election pursuant to subsection (4)(c)(I) of this section are in favor of exclusion to become a part of another district and the court determines the election was held in accordance with article 13.5 of title 1, the court shall enter an order with any conditions so prescribed excluding the area from the special district and including it in the fire protection district or county fire improvement district with a higher mill levy. The validity of the exclusion to become a part of another district may not be questioned directly or indirectly in any suit, action, or proceeding, except as provided in article 11 of title 1.

(d) The order of exclusion entered pursuant to paragraph (b) or (c) of this subsection (4) shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that the bonded indebtedness is then scheduled to be retired. After July 1, 1993, failure of the order for exclusion to recite the existence and scheduled retirement date of the indebtedness, when due to error or omission by the special district, shall not constitute grounds for correction of the omission of a levy on the excluded property from the assessment roll pursuant to section 39-5-125, C.R.S.

(5) (a) If the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition or resolution should not be excluded from the special district, it shall order that the petition be denied or that the resolution be rescinded.

(b) (I) Any petition that is denied or resolution that is finally adopted may be appealed to the board of county commissioners of the county in which the special district's petition for organization was filed for review of the board's decision. The appeal shall be taken no later than thirty days after the decision.

(II) Upon appeal, the board shall consider the factors set forth in subsection (3) of this section and shall make a determination whether to exclude the properties mentioned in the petition or resolution based on the record developed at the hearing before the special district board.

(c) (I) Any decision of the board of county commissioners may be appealed for review to the district court of the county which has jurisdiction of the special district pursuant to section 32-1-303 within thirty days of such board's decision.

(II) On appeal, the court shall review the record developed at the hearing before the special

district board and, after considering all of the factors set forth in subsection (3) of this section, shall make a determination whether to exclude the properties mentioned in the petition or resolution.

Source: L. 81: Entire article R&RE, p. 1558, § 1, effective July 1. **L. 88:** (3) R&RE and (4) and (5) added, pp. 1149, 1150, §§ 1, 2, effective June 11. **L. 93:** (4)(b) amended, p. 83, § 1, effective March 29. **L. 94:** (1.5) added and (2), IP(3), (3)(a)(I), (3)(a)(II), (3)(b) to (3)(d), (3)(f), (4), (5)(a), (5)(b), and (5)(c)(II) amended, p. 1347, § 1, effective July 1. **L. 96:** (1) amended, p. 474, § 13, effective July 1. **L. 2016:** (4)(c) amended, (SB 16-189), ch. 210, p. 784, § 83, effective June 6. **L. 2021:** (4)(c)(I) and (4)(c)(II) amended, (SB 21-160), ch. 133, p. 539, § 10, effective September 7.

Editor's note: (1) This section is similar to former § 32-2-122 as it existed prior to 1981.

(2) Section 2 of chapter 237, Session Laws of Colorado 1994, provides that, prior to the inclusion of any property into a fire district with a higher tax rate, an election pursuant to § 20 of article X of the Colorado constitution shall be held.

32-1-502. Exclusion of property within municipality - procedure.

(1) (a) The governing body of any municipality wherein territory within a special district is located, the board of any special district with territory within the boundaries of any municipality, or fifty percent of the fee owners of real property in an area of any municipality in which territory within a special district is located may petition the court for exclusion of the territory described in the petition from the special district. Within ten days after the filing of any petition for exclusion, the governing body of the municipality and the board shall be notified of the exclusion proceedings. The taxpaying electors shall be notified of the exclusion proceedings by publication. The governing body of the municipality, the board, and the taxpaying electors, as a class, shall be parties to the exclusion proceedings.

(b) The provisions of this section shall not apply to health service districts.

(c) The provisions of this section shall not apply in the event that the territory described in the petition for exclusion constitutes the entire territory of the special district.

(2) Subject to the provisions of subsection (5) of this section, the court shall hold a hearing on the petition and order the territory described in the petition or any portion thereof excluded from the special district if the following conditions are met:

(a) The governing body of the municipality agrees, by resolution, to provide the service provided by the special district to the area described in the petition on and after the effective date of the exclusion order.

(b) The service to be provided by the municipality will be the service provided by the special

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district in the territory described in the petition for exclusion.

(c) The governing body of the municipality and the board shall each submit a plan for the disposition of assets and continuation of services to all areas of the district. Said plans shall include, if applicable, provisions for the maintenance and continuity of facilities to be utilized by the territories both within and without the municipal boundaries and of services to all territories served or previously served by the special district. If the municipality and the special district agree upon a single plan and enter into a contract incorporating its provisions, the court shall review such contract, and if it finds the contract to be fair and equitable, the court shall approve the contract and incorporate its provisions into its exclusion order. The court's review of the provisions of the contract shall include, but not be limited to, consideration of the amount of the special district's outstanding bonds, the discharge by the municipality or the territory excluded from the special district of that portion of the special district's indebtedness incurred to serve the territory proposed for exclusion, the fair market value and source of special district facilities located within the territory proposed for exclusion, the facilities to be transferred which are necessary to serve the territory proposed for exclusion, the adequacy of the facilities retained by the special district to serve the remaining territory of the special district, the availability of the facilities transferred to the municipality for use, in whole or in part, in the remaining territory of the special district, the effect which the transfer of the facilities and assumption of indebtedness will have upon the service provided by the special district in territory which is not part of the exclusion, and the extent to which the exclusion reduces the services or facilities or increases the costs to users in the remaining territory of the special district.

(d) If the municipality and the special district are unable to agree upon a single plan, the court shall review the plans of the municipality and the special district and direct each to carry out so much of their respective plans in which there is no disagreement and make such other provisions as the court finds fair and equitable, and shall make such allocation of facilities, impose such responsibilities for the discharge of indebtedness of the special district, and impose such other conditions and obligations on the special district and the municipality which the court finds necessary to permit the exclusion of territory from the special district and the transfer of facilities which are necessary to serve the territory excluded without impairing the quality of service nor imposing an additional burden or expense on the remaining territory of the special district. For the purpose of making such determination, the criteria set forth in this paragraph (d) and paragraphs (b) and (c) of this subsection (2) shall be considered. The respective portions of the plans to be performed, the transfer of facilities, and the requirements for the discharge of indebtedness of the special district and other conditions and obligations imposed by the court shall be specifically set forth in the order excluding territory from the special district.

(3) (a) The following additional requirements shall be met before any court orders the exclusion of any area from any water, sanitation, or water and sanitation district or any metropolitan district providing water or sanitation services or both:

(I) Such district's outstanding bonds shall not exceed ten percent of the valuation for

assessment of the taxable property in the remaining territory of the special district, or, as an alternative, the municipality or the territory excluded from the special district shall discharge that portion of the special district's indebtedness incurred to serve the territory proposed for exclusion or the municipality shall have entered into a contract to purchase the entire system or systems of such district at a price at least sufficient to pay in full all of the outstanding indebtedness of such district and all of the interest thereon.

(II) Provision shall be made that all areas of such district receive the service or services for which such district was organized in substantial compliance and fulfillment of the service plan of the district, if one exists, or in accordance with the petition for organization of such district if no service plan was originally adopted and approved pursuant to part 2 of this article.

(b) If an election in a water, sanitation, or water and sanitation district or a metropolitan district providing water or sanitation services or both has been held pursuant to subsection (7) of this section and the majority of votes cast favor the municipality providing the service, the municipality and such district shall enter into a contract for the municipality to assume full responsibility for the operation and maintenance of the entire system or systems of such district and to integrate said system or systems with those of the municipality to the largest extent possible. The terms and conditions of service and the rates to be charged by the municipality for said service under the contract shall be uniform with the terms, conditions, and rates for similar service provided by said municipality to other users within the municipality.

(4) If no election has been held pursuant to subsection (5) of this section, the following additional requirement shall be met before any court orders the exclusion of any area from any fire protection district: The quality of service including, but not limited to, the fire insurance costs for the improvements within the excluded area will not be adversely affected by such exclusion.

(5) (a) After the filing of a petition for exclusion under subsection (1) of this section, ten percent or one hundred of the eligible electors of the special district territory proposed for exclusion, whichever number is less, may petition the court for a special election to be held within the special district territory proposed for exclusion on the question of exclusion of the territory described in the petition for exclusion. If a petition for a special election is filed with the court and complies with this subsection (5), the court shall order a special election to be held only after it finds the conditions of subsections (2)(a), (2)(c), and (2)(d) and, if applicable, of subsection (3) or (4) of this section are met. The election shall be held and conducted, and the results thereof determined, in the manner provided in article 13.5 of title 1. The special district shall bear the costs of the election.

(b) If a majority of the electors voting at such election approve the question of exclusion, the court shall order the territory excluded from the special district in accordance with its findings on the conditions specified in subsection (2) and, if applicable, of subsection (3) or (4) of this section. If a majority of those voting do not approve the question, the court shall conclusively

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terminate the exclusion proceeding.

(6) Any order for exclusion of territory from a special district shall become effective on January 1 next following the date the order is entered by the court. The order for exclusion shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that such bonded indebtedness is then scheduled to be retired. After July 1, 1993, failure of the order for exclusion to recite the existence and scheduled retirement date of such indebtedness, when due to error or omission by the special district, shall not constitute grounds for correction of the omission of a levy on the excluded property from the assessment roll pursuant to section 39-5-125, C.R.S.

(7) (a) After any exclusion of territory under this section, the court may order an election of the electors of the portion of the special district remaining to determine whether they desire the municipality to provide the service provided by the special district if either of the following conditions exists:

(I) More than fifty percent of the territory within the special district as it existed prior to such exclusion has been excluded; or

(II) The valuation for assessment of the area of the excluded territory is greater than the valuation for assessment of the area of the remaining territory in the special district.

(b) If a majority of the electors voting at such election approve the question requiring the municipality to provide such service, the court shall request the governing body of the municipality and the board to enter into a contract which will govern the providing of the service. The terms and conditions of the contract shall be reviewed and approved by the court, but in no event shall the terms, rates, and conditions be less equitable than for services supplied by a municipality to any other users within the municipality. The court's review of the contract or, if the municipality and the special district after good faith negotiations are unable to agree upon a contract, the court's order shall be in accordance with the criteria set forth in paragraphs (b), (c), and (d) of subsection (2) of this section. The special district shall continue in existence for the purpose of fulfilling any obligation imposed upon it by the contract with the municipality or otherwise.

(c) Any election held pursuant to this subsection (7) shall be held and conducted, and the results thereof determined, in the manner provided in articles 1 to 13 of title 1, C.R.S.

Source: L. 81: Entire article R&RE, p. 1559, § 1, effective July 1. **L. 85:** (2)(a) and (2)(b) amended, p. 1110, § 1, effective April 24. **L. 92:** (5)(a) and (7)(c) amended, p. 877, § 111, effective January 1, 1993. **L. 93:** (6) amended, p. 83, § 2, effective March 29. **L. 96:** (1)(b) amended, p. 474, § 14, effective July 1. **L. 2016:** (5)(a) amended, (SB 16-189), ch. 210, p. 785, § 84, effective June 6. **L. 2021:** (5)(a) amended, (SB 21-160), ch. 133, p. 540, § 11, effective

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September 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

This section is a remedial statute intended to facilitate the elimination of the overlapping of services provided by local governments and the double taxation which may occur because of annexation of municipal territory, when all or part of the annexed territory also lies within a special improvement district. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

It should be liberally construed so as to accomplish its purpose. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

Exclusive remedy. The entire purpose of the exclusion provisions -- to eliminate the overlapping of services and double taxation -- would be totally frustrated if a town were not allowed to petition for exclusion from the district. The statute provides no other remedy by which a town can avoid the necessity of paying for services which it already provides. In re Org. of N. Chaffee County Fire Prot. Dist., 190 Colo. 40, 544 P.2d 637 (1975).

Whether or not duplication of services caused. A municipality may petition for exclusion from a special service district regardless of whether annexation has caused the duplication of services. In re Org. of N. Chaffee County Fire Prot. Dist., 190 Colo. 40, 544 P.2d 637 (1975).

This section controls in event of conflict. In the event of a conflict between this section and other exclusion provisions, this section is controlling. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

Remedies under this section and former § 32-5-323 are separate. The words "in addition to" contained in former § 32-1-309 are not intended to require that Denver proceed under former § 32-5-323 (since repealed), and this section sequentially. Instead, the two remedies are entirely separate. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

A town need not petition for exclusion from the district for water service that the district has not provided and has not shown itself capable of providing. If the district were providing water service to the town in addition to the sewerage service, the town would be required to proceed through an exclusion process in order to substitute itself as the water service provider. S. Fork Water v. Town of S. Fork, 252 P.3d 465 (Colo. 2011).

Denver may, in the first instance, petition for the exclusion of the annexed municipal territory under this section. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

No need to first initiate petition for exclusion pursuant to former § 32-5-323. The words "in

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addition to" in former § 32-1-309, which provided that the procedure for filing petitions for exclusion under this section in addition to other means set forth in title 32 by which the exclusion may be accomplished, should not be construed to require Denver to initiate a petition for exclusion pursuant to former § 32-5-323 (since repealed) before proceeding under this section. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

The legislative purpose of this section is fulfilled by according Denver and other cities the right to file a petition for exclusion of municipal territory on their behalf in the first instance rather than proceeding indirectly through the property owners as would be required under former § 32-5-323 (since repealed). City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

Before a city may undertake to seek exclusion of a particular territory, it must establish itself as the governing body of that area. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

Until an annexation is finally determined to be void, the disputed territory remains a part of the annexing municipality. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

This section is not unconstitutionally vague and does not confer arbitrary and unlimited power on the trial court, but rather provides a specific statutory procedure for the exclusion of municipal territory from a special service district, as it sets forth conditions which a petitioning municipality must meet and which the trial court must find have been complied with in order to obtain exclusion from a district. City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist., 181 Colo. 334, 509 P.2d 317 (1973).

Intent of section. The section is intended to ensure that the overall quality of the services provided will not be lower as a result of the exclusion of municipal territory. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

City may contract with others to furnish services. This section does not require that the city itself do the furnishing of services; it merely says it shall provide them, and if a city council chooses to contract with others to provide such services, it has the right to do so. City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist., 181 Colo. 334, 509 P.2d 317 (1973).

City need not prove intention to duplicate all services. While there was no evidence in the record to show that Denver could or would duplicate all of the services provided by the fire protection district, this section did not require Denver to prove its intention to do so. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

The requirement in subsection (2)(b) that the service provided by the municipality will be the service provided by the special district does not require the municipality to be able to provide the service before the exclusion occurs. City Council v. S. Suburban Park, 160 P.3d 376 (Colo. App. 2007).

In determining whether a plan is fair and equitable, it is not necessary to determine that the exclusion of property from a special district would result in either an impairment of the quality of service or the imposition of an additional burden or expense on the special district before considering statutory criteria, including fair market value. City Council v. S. Suburban Park, 160 P.3d 376 (Colo. App. 2007).

The quality of service and additional burden language in subsection (2)(d) is an outer limit on the court's power to add provisions to the exclusion plan rather than a prerequisite to considering the statutory criteria in making the exclusion fair and equitable. City Council v. S. Suburban Park, 160

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P.3d 376 (Colo. App. 2007).

Although this section directs the trial court to make provisions in the exclusion plan as the court finds fair and equitable and references fair market value as one factor the court should consider, it does not require a trial court to order a city to reimburse a special district for the fair market value of the transferred facilities. City Council v. S. Suburban Park, 160 P.3d 376 (Colo. App. 2007).

Factors to be weighed. The trial court must weight the advantages and disadvantages of an exclusion to determine whether, on balance, the quality of service will not decline as a result of the exclusion. City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

Appellate court bound by trial court's determination. As to whether the services to be provided by Denver in the future would not be of lower quality than those presently provided by the fire protection district, the appellate court is bound by the trial court's determination unless it is "clearly arbitrary and capricious". City & County of Denver v. Bd. of Dirs. of Bancroft Fire Prot. Dist., 38 Colo. App. 53, 554 P.2d 714 (1976).

While the legality of annexation proceedings is being challenged in court, the disputed territory remains in the city subject to city taxes and assessments and is entitled to all city services. City Council v. Bd. of Dirs. of S. Sub. Metro. Recreation & Park Dist., 181 Colo. 334, 509 P.2d 317 (1973).

Property excluded from a fire protection district by a July 12, 1974 order was subject to all property taxes levied by the district for the 1974 taxable year, and for the taxable year 1975 and thereafter, the excluded territory was subject only to a levy for taxes for a pro rata share of the district's indebtedness outstanding on January 1, 1975. City & County of Denver v. Bd. of Dirs., 37 Colo. App. 496, 549 P.2d 1090 (1976).

Applied in City of Westminster v. Hyland Hills Metro. Park & Recreation Dist., 190 Colo. 558, 550 P.2d 337 (1976).

32-1-503. Effect of exclusion order.

(1) Territory excluded from a special district pursuant to the provisions of this part 5 shall not be subject to any property tax levied by the board for the operating costs of the special district. For the purpose of retiring the special district's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the special district shall remain intact, and the excluded territory shall be obligated to the same extent as all other property within the special district but only for that proportion of such outstanding indebtedness and the interest thereon existing immediately prior to the effective date of the exclusion order. The board shall levy annually a property tax on all such excluded and remaining property sufficient, together with other funds and revenues of the special district, to pay such outstanding indebtedness and the interest thereon. The board is also empowered to establish, maintain, enforce, and, from time to time, modify such service charges, tap fees, and other rates, fees, tolls, and charges, upon residents or users in the area of the special district as it existed prior to the exclusion, as may in the discretion of the board be necessary to supplement the proceeds of said tax levies in the payment of the outstanding indebtedness and the interest thereon. In no event shall excluded

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territory of a special district become obligated for the payment of any bonded indebtedness created after the date of the court's exclusion order.

(2) The change of boundaries of the special district shall not impair nor affect its organization, nor shall it affect, impair, or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

(3) Notice of the court order of any exclusion accomplished pursuant to this part 5 shall be given in accordance with the provisions of section 32-1-105.

Source: L. 81: Entire article R&RE, p. 1562, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-308 as it existed prior to 1981.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

This section is directory to the taxing authorities. In re Org. of S.W. Adams County Fire Prot. Dist., 192 Colo. 142, 556 P.2d 1215 (1976).

Property excluded from a fire protection district by a July 12, 1974 order was subject to all property taxes levied by the district for the 1974 taxable year, and for the taxable year 1975 and thereafter, the excluded territory was subject only to a levy for taxes for a pro rata share of the district's indebtedness outstanding on January 1, 1975. City & County of Denver v. Bd. of Dirs., 37 Colo. App. 496, 549 P.2d 1090 (1976).

Property excluded from a special district pursuant to this section is still obligated to the same extent as all other property within the special district for purposes of retiring the special district's outstanding indebtedness existing at the time of the exclusion order. Excluded property is to be valued and assessed in the same manner, and subject to the same mill levy, as all other property in the district. In re Black Forest Fire/Rescue Prot. Dist., 85 P.3d 591 (Colo. App. 2003).

"Proportion", as used in this section, refers to the relationship between a special district's outstanding indebtedness prior to the exclusion of property and its total indebtedness. Nothing in the section suggests that "proportion" refers to any relationship between the assessed value of the excluded property and the assessed value of the district as a whole. In re Black Forest Fire/Rescue Prot. Dist., 85 P.3d 591 (Colo. App. 2003).

A court-ordered monetary transfer from the city to the special district upon exclusion is not double taxation for the same government service. The transfer of money to the special district was to compensate the district for its financial loss and was intended to support facilities outside of the city that will remain in the district. Taxes collected by the city and used to pay the transfer amount would serve a different purpose from taxes used to support facilities within the city that are excluded from the district. Cherry Hills Vill. v. S. Suburban Park & Recreation Dist., 219 P.3d 421 (Colo. App. 2009).

This section cannot be construed to prohibit trial courts from ordering monetary transfers

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upon exclusion. Such an interpretation would be contrary to the provisions of § 32-1-502 (2)(d), which requires courts to resolve disputes in a manner that is fair and equitable. Cherry Hills Vill. v. S. Suburban Park & Recreation Dist., 219 P.3d 421 (Colo. App. 2009).

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PART 6
CONSOLIDATION

Law reviews: For article, "Consolidation of Fire Protection Districts: A Case Study", see 24 Colo. Law. 813 (1995).

32-1-601. Definitions.

As used in this part 6, unless the context otherwise requires:

(1) "Concurring resolution" means a resolution passed in accordance with this part 6 by the board of any special district for the purpose of accepting the consolidation resolution.

(2) "Consolidated district" means a quasi-municipal corporation of this state resulting from the consolidation of two or more special districts; or resulting from the consolidation of one or more of the services of two or more special districts, one of which is not a metropolitan district, which consolidation of services may include the consolidation of all services of a special district with only specified services of one or more special districts; or resulting from the consolidation of one or more of the services of two or more metropolitan districts and may include the consolidation of all services of a metropolitan district with only specified services of another metropolitan district. If a district which provides a single service or water and sanitation services consolidates its service or services with another single service district, no new separate district may be formed.

(3) "Consolidation resolution" means a resolution passed in accordance with this part 6 by a board of any special district for the purpose of initiating the consolidation of two or more such special districts into a single and consolidated district, the consolidation of one or more of the services of two or more special districts, one of which is not a metropolitan district, or the consolidation of one or more of the services of two or more metropolitan districts.

Source: L. 81: Entire article R&RE, p. 1563, § 1, effective July 1. **L. 85:** (2) and (3) amended, p. 1111, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-112 (2) to (4) as it existed prior to 1981.

32-1-602. Procedure for consolidation.

(1) (a) Two or more special districts may be consolidated into a single consolidated district, and such consolidation may occur between or among such districts whether or not they were originally organized for the same purpose and whether or not such districts are contiguous.

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(b) Two or more special districts may consolidate one or more of their services whether or not they were originally organized for the same purpose and whether or not such districts are contiguous.

(2) Consolidation may be accomplished in the following manner:

(a) The board of any special district shall pass a consolidation resolution declaring that such district and any specified special district or districts are so situated that all such districts may operate or that one or more specified services of each of the districts may be operated effectively and economically as a consolidated district and that the public health, safety, prosperity, and general welfare of the inhabitants of the special district initiating the consolidation will be better served by the consolidation of such districts or services. The resolution shall also state the proposed name of the proposed consolidated district, the special districts or services to be included within the proposed consolidated district, whether the board of the consolidated district will have five or seven directors, any special conditions that may attach to the consolidated district, and the time limit within which the included special districts must approve the consolidation resolution in order to be included within the proposed consolidated district. Such time limit shall be not later than six months after the date of such resolution.

(b) After receipt of such consolidation resolution and prior to the time limit fixed in the consolidation resolution, the board of each of the special districts named in the resolution proposing the consolidation, other than the special district initiating the proposed consolidation, shall pass a resolution either concurring in the consolidation or rejecting the same and shall send a copy of such resolution to the special district initiating the consolidation.

(c) Each special district desiring to be included or have its service or services included within the consolidated district shall file the concurring resolution with the initiating special district. If one or more special districts sought to be included in the initiating resolution file concurring resolutions stating that such consolidated district will promote the public health, safety, prosperity, and general welfare of the inhabitants within the concurring special districts, the initiating special district, within thirty days after the date of the receipt of all concurring resolutions, shall file with the board of county commissioners of each county having territory within one or more of the districts and in the court wherein the organization petition of the initiating special district was filed a copy of such consolidation resolution and the concurring resolutions of the other special districts seeking consolidation of the districts or the specified services. Any proposed consolidated district which is subject to the provisions of part 2 of this article pursuant to section 32-1-607 (6) shall first obtain approval of the service plan in accordance with the provisions of part 2 of this article. Any special district rejecting the consolidation resolution shall not thereafter be included in any consolidation proceedings then pending.

(d) When the consolidation resolution and one or more concurring resolutions are filed in

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court, the court shall fix a date, not less than thirty days nor more than forty days after the date of filing, within which time a hearing shall be held to determine the legality of the proposed consolidation. Notice of the filing of the resolutions and of the date fixed for hearing objections to the proposed consolidation shall be given by publication, and written notice shall be provided to the governing body of any municipality entitled to notice pursuant to section 32-1-607 (6). No pleadings shall be filed by any special district involved, but any eligible elector of, the fee owner of any real property situated within, or any county or municipality having territory within any of the special districts involved in the proposed consolidation which desires to oppose the consolidation or the inclusion of property or territory in a consolidated district shall file a written and verified petition in the court five days prior to the hearing date and serve copies thereof upon each of the special districts desiring consolidation. The petition shall set forth clearly and concisely the objections of the petitioner, which objections shall be limited to the failure of any initiating district or concurring district to comply with this part 6, or, in a consolidation of services proceeding, duplication of service to the petitioner's property or territory by an existing municipality or special district not part of the proposed consolidated district or the provision of new and unwanted service to the petitioner's property by the proposed consolidated district. The court shall hear the petition and all objections to it at the time of the hearing on the consolidation resolution and the concurring resolutions and shall determine whether, in the general public interest and subject to the requirements of section 32-1-503, the property should be excluded or included in the proposed consolidated district.

(e) At the hearing, if the court finds that the consolidation resolution and the concurring resolutions have been properly filed and that the board of each special district desiring to be consolidated or desiring to have specified services consolidated has proceeded in accordance with this part 6, the court shall enter an order ex parte setting an election within each of the consolidating special districts for the approval of the consolidated district by the eligible electors affected by the consolidation at the next regular special district or special election, which shall be held and conducted pursuant to article 13.5 of title 1. The order shall require publication of notice as required by section 1-13.5-510, specifying the name of the consolidated district; the names of the special districts to be consolidated or the name of the district into which specific services are to be consolidated and the names of the special districts presently empowered to provide the services; a summary of any special conditions that may attach to the consolidated district, including any preconsolidation agreements and the provisions included therein regarding the assumption of debt and the approval of any financial obligation, including accrued unfunded pension liability, as debt to remain payable by the taxpayers of the consolidating special district which incurred the obligation or maintained the pension plan to which the accrued unfunded liability attaches; if the consolidated district may be granted the powers of a metropolitan district, the effect of the change and the services a metropolitan district may provide, including any change in maximum mill levies set forth in section 32-1-1101 (1), or, if the mill levy is unlimited, the fact that there is no mill levy limit established by statute; and the area to be included within the consolidated district, which shall be all of the area originally contained

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within the organization order for each individual special district, together with all areas contained in any inclusions, the consolidated area not to include any area excluded by any special district being so consolidated or by the court pursuant to subsection (2)(d) of this section. If two or more districts are to be consolidated and if the consolidated district is to assume metropolitan district powers, the court shall order that the eligible electors vote separately on the question of consolidation and the question of granting the consolidated district the powers of a metropolitan district. If the eligible electors approve consolidation but reject the granting of metropolitan district powers, the consolidated district shall have only those powers granted single-purpose districts providing the same services. If all or part of the outstanding bonded indebtedness of all of the consolidating special districts is to be assumed by the consolidated district, the court shall also order that the eligible electors vote separately on the question of consolidation and the question of assuming the indebtedness at the consolidation election. If the eligible electors approve consolidation but reject the assumption of indebtedness by the consolidated district, the outstanding bonded indebtedness shall remain the obligation of the special district which incurred the bonded indebtedness and shall be paid and discharged by the taxpayers having taxable property within the boundaries of the indebted special district. If a preconsolidation agreement provides that the consolidation shall be contingent upon assumption of debt by the consolidated district, then the consolidation shall not be approved unless the assumption of indebtedness is approved by the eligible electors. If any financial obligation of one or more of the consolidating districts is to be submitted to the electors for approval as debt, the court shall also order that the electors vote separately on the question of consolidation and the question of approval of each financial obligation as debt, which issue shall be presented to the electors in accordance with section 32-1-606.5. If the electors approve consolidation but do not approve the treatment of one or more financial obligations as debt, the financial obligations not so approved shall be assumed by the consolidated district in the same manner as other obligations of consolidating districts are assumed, unless a preconsolidation agreement providing that the consolidation shall be contingent upon the approval regarding treatment of the financial obligation as debt, in which case the consolidation shall not be approved. The area of the consolidated district after the election shall be the total area of the special districts consolidated existing as of the date of the court order. No appeal shall lie from any orders of the court.

(f) Approval by a majority of the eligible electors voting in the election within each of the consolidating special districts concerning the consolidation of the special districts or specified services shall be deemed to conclusively establish the consolidated district against all persons except the state of Colorado which, within thirty-five days after the election, may contest the consolidation or the election in an action in the nature of a writ of quo warranto. Otherwise, the consolidation of the districts or services and the organization of the consolidated district shall not directly or indirectly be questioned in any action or proceeding.

(3) Any proceeding for consolidation undertaken pursuant to this section which is not approved shall not operate as a bar to any subsequently proposed consolidation of one or more of the special districts or services named in the consolidation resolution with any other special

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district or with each other. The provisions of section 32-1-106 shall not apply to any subsequently proposed consolidation.

Source: L. 81: Entire article R&RE, p. 1563, § 1, effective July 1. **L. 85:** (1), (2)(a), (2)(c) to (2)(f), and (3) amended, p. 1112, § 2, effective July 1. **L. 92:** (2)(d) to (2)(f) amended, p. 878, § 112, effective January 1, 1993. **L. 93:** (2)(e) amended, p. 562, § 1, effective April 30. **L. 2012:** (2)(f) amended, (SB 12-175), ch. 208, p. 881, § 147, effective July 1. **L. 2016:** (2)(e) amended, (SB 16-189), ch. 210, p. 786, § 85, effective June 6. **L. 2021:** (2)(e) amended, (SB 21-160), ch. 133, p. 541, § 12, effective September 7.

Editor's note: This section is similar to former § 32-1-113 as it existed prior to 1981.

32-1-602.5. Consolidation and review by administrative action.

Whenever the division finds, upon its own investigation or upon the receipt of information from any source, that the consolidation, restructuring of services, or other changes in the operations of one or more special districts would be in the best interests of the residents of the special districts or will improve the quality of services or lower the costs of services, the division may review the operations and performance of such special districts and issue recommendations. The division may require one or more special district boards to hold a public meeting to discuss the operations and performance of such special districts. If such public meeting involves two special district boards and both boards agree that consolidation is appropriate, they shall commence consolidation procedures pursuant to section 32-1-602. If the public meeting involves three or more special district boards, a majority of such boards must approve consolidation before consolidation procedures are commenced.

Source: L. 91: Entire section added, p. 787, § 13, effective June 4.

32-1-603. Procedure after consolidation election.

(1) After the election approving the consolidated district, the members of the board of each of the special districts consolidated or having services consolidated into the consolidated district shall constitute the organizational board of the consolidated district, regardless of the number of directors thereof. This organizational board shall remain as the board of the consolidated district until such time as the first board of the consolidated district is selected as provided in this section.

(2) The organizational board, within six months after the date of the consolidation election, shall:

(a) (I) If the board of the consolidated district is to have five directors, determine the terms of the directors of the first board as provided in paragraph (b) of this subsection (2); or

(II) If the board of the consolidated district is to have seven directors, divide the consolidated district into seven director districts, each of which shall have, as nearly as possible, the same number of eligible electors and which shall be as contiguous and compact as possible, and determine the terms of the directors of the first board as provided in paragraph (b) of this subsection (2). In making the division, the board shall consider existing or potential developments within the proposed director districts which when completed would, in the reasonably near future, increase or decrease the number of eligible electors within the director district. The organizational board shall then select from its members a representative of each director district, and, if possible, the representatives shall be eligible electors within the boundaries of the director district which they are selected to represent. Thereafter, directors shall be eligible electors of the director district which they represent.

(b) Determine the terms of the directors of the first board of the consolidated district. In making the determination, the organizational board shall fix the terms of the first board as follows: The terms of two directors, if there are five directors, or three directors, if there are seven directors, of the first board having the fewest years to serve on the board to which they were originally elected shall expire at the first regular special district election after the date of order of the court as provided in subsection (4) of this section; and the terms of the remaining three directors, if there are five directors, or the remaining four directors, if there are seven directors, having the greatest number of years to serve on the board to which they were originally elected shall expire at the second regular special district election. If the terms of the directors so selected to the first board of the consolidated district expire on the same date, the terms of the directors shall be determined by the organizational board. The terms shall be determined, however, so that two or three directors, as applicable, shall have terms expiring in two years and three or four directors, as applicable, shall have terms expiring in four years. Thereafter, each board member shall have a term of four years.

(c) Determine the amount of bond for each director of the consolidated district, which amount shall not be less than one thousand dollars per director and may be an individual, schedule or blanket bond at the expense of the consolidated district, and fix the amount of the treasurer's bond in an amount not less than five thousand dollars, which bonds are conditioned upon the faithful performance of their duties.

(3) After making such determinations, the organizational board shall promptly file in the court having jurisdiction as provided in section 32-1-602 (2)(c) a petition stating the name of the consolidated district, the name and address of each member of the first board of the consolidated district, the term of each member thereof, the amount of the surety bonds fixed in accordance with this section, and a description of the director districts, if any, of the consolidated district. Such petition shall also have attached to it photocopies or duplicates of the bonds duly certified by the insurance or surety company issuing the bonds, the originals of which bonds shall be retained in the files of the consolidated district.

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(4) The court, upon the filing of such petition, if satisfied that the allegations therein are true, shall enter an order ex parte stating the name of the consolidated district, the name and address of each member of the first board of the consolidated district, a description of the director districts, if any, of the consolidated district, a description of the total consolidated district, any conditions that may attach to the consolidated district if services are consolidated, a description of the specified services to be provided by such district, and the term of office of each member of the board of the consolidated district, and, at the same time, the court shall approve or disapprove the bond or bonds attached to the petition. This order shall be forthwith recorded in the office of the county clerk and recorder in each county wherein the consolidated district is organized, and notice of such action shall be given in accordance with the provisions of section 32-1-105.

(5) The members of the first board named in the order of court as provided in subsection (4) of this section, upon taking the oath of office, shall constitute the board of the consolidated district. The board shall elect one of its members as chairman of the board and president of the consolidated district, one of its members as treasurer of the board and the consolidated district, and a secretary of the board and the consolidated district who may be a member of the board. The secretary and the treasurer may be one person, but, if such is the case, he shall be a member of the board.

Source: L. 81: Entire article R&RE, p. 1565, § 1, effective July 1. **L. 85:** (1) and (4) amended, p. 1115, § 3, effective July 1; (2)(a)(II), (3), and (4) amended, p. 1084, § 3, effective July 1, 1986. **L. 92:** (2)(a) and (2)(b) amended, p. 880, § 113, effective January 1, 1993.

Editor's note: (1) This section is similar to former § 32-1-114 as it existed prior to 1981.

(2) Amendments to subsection (4) by House Bill 85-1009 and House Bill 85-1062 were harmonized.

32-1-604. Advisory board members.

The members of the organizational board of the consolidated district not selected to act as the members of the first board of the consolidated district may act, however, as advisory members to the first board until such time as the terms of office for which they were originally elected would have expired. Advisory members may be compensated equally with compensation paid to the board of the consolidated district for each meeting attended. Advisory board members may not act as officers of nor bind the consolidated district and shall have no vote on any matters before the board of the consolidated district, but they may be employed by the board of the consolidated district in any capacity.

Source: L. 81: Entire article R&RE, p. 1566, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-115 as it existed prior to 1981.

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32-1-605. Special election provisions for consolidated districts.

(1) The first election of the consolidated district shall be the next regular special district election. Except as otherwise provided in this part 6, nominations and elections for the consolidated district shall be governed by articles 4 and 13.5 of title 1, C.R.S.

(2) (a) For those consolidated districts having seven directors on the board, beginning with the first regular special district election and continuing with each regular special district election thereafter, members of the consolidated board shall be eligible electors of the director district which they represent. Nominations for a director shall be signed by eligible electors from the director district which the director to be elected is to represent.

(b) After the first regular special district election of directors to the board in such consolidated districts, the board of the consolidated district, at least ninety days prior to any subsequent regular special district election, shall determine the boundaries of each director district pursuant to section 32-1-603 (2) and shall not make any change until after the regular special district election has been held. Upon making any change in the boundaries of any director district, the board, within ninety days prior to a regular special district election, shall file a resolution changing the boundaries with the clerk of the court having jurisdiction and shall give notice by one publication within the consolidated district.

Source: L. 81: Entire article R&RE, p. 1566, § 1, effective July 1. **L. 85:** (1)(b) amended, p. 1084, § 4, effective July 1, 1986. **L. 92:** Entire section amended, p. 880, § 114, effective January 1, 1993. **L. 2016:** (1) amended, (SB 16-189), ch. 210, p. 787, § 86, effective June 6.

Editor's note: (1) This section is similar to former § 32-1-116 as it existed prior to 1981.

(2) Changes were made in numbering in 1994 to conform to C.R.S. format.

32-1-606. Bonded indebtedness of consolidated districts.

(1) Except as otherwise provided in subsection (3) of this section and approved by the eligible electors pursuant to section 32-1-602 (2)(e), all of the outstanding bonded indebtedness of any special district which becomes part of a consolidated district or which has all of its services completely consolidated shall be paid and discharged by the taxpayers having taxable property within the boundaries of the special district which incurred the bonded indebtedness. The board of the consolidated district shall levy a general property tax annually, for so long as may be necessary to pay the bonded indebtedness according to its terms, upon the properties lying within the boundaries of the special district which incurred the bonded indebtedness as the boundaries existed when the special district became a part of the consolidated district. The levying of the tax shall not prevent the board of the consolidated district from imposing special

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rates, tolls, or charges for services and facilities afforded within the boundaries of the indebted special district or made available to the properties lying within the indebted special district.

(2) Except as otherwise provided in subsection (3) of this section and approved by the eligible electors pursuant to section 32-1-602 (2)(e), all of the outstanding bonded indebtedness of any special district which consolidates less than all of its services into a consolidated district shall remain the obligation of the special district which incurred the bonded indebtedness and shall be paid and discharged by the taxpayers having taxable property within the boundaries of the indebted special district. The board of the special district which incurred the bonded indebtedness shall levy a general property tax annually, for so long as may be necessary to pay the bonded indebtedness according to its terms, upon the properties lying within the boundaries of the indebted special district. The levying of the tax shall not prevent the board of the consolidated district from imposing special rates, tolls, or charges for services and facilities afforded within the boundaries of the indebted special district or made available to the properties lying within the indebted special district.

(3) Nothing in this section shall prevent a consolidated district from being bound by preconsolidation agreements which have been entered into between or among consolidating districts and which have become part of the terms and conditions of consolidation as set forth in the court order under section 32-1-603 (4), including the assumption of all or part of the outstanding bonded indebtedness of all of the consolidating special districts by the consolidated special district.

Source: L. 81: Entire article R&RE, p. 1567, § 1, effective July 1. **L. 85:** Entire section amended, p. 1115, § 4, effective July 1. **L. 92:** (1) and (2) amended, p. 881, § 115, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-117 as it existed prior to 1981.

32-1-606.5. Elector approval of financial obligations of consolidating districts.

(1) Whenever the board of a consolidating special district determines, by resolution, that the interest of the special district, the resulting consolidated district, and the public interest require that the obligation to pay and discharge any financial obligation, including accrued unfunded pension liability, remain the obligation of the taxpayers of said consolidating special district, the board shall request that the court order the submission of the proposition of treating the financial obligation as general obligation indebtedness to the electors of said consolidating district at the consolidation election. Such request shall be made to the court at the hearing held in accordance with section 32-1-602 (2)(e) and shall recite, as to each financial obligation to be submitted at the election:

(a) The object and purpose for which the financial obligation was incurred or the pension

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plan to which the accrued unfunded liability attaches;

(b) The estimated total cost of discharging the financial obligation;

(c) The estimated term over which the financial obligation will be discharged and the estimated annual cost;

(d) The initial mill levy necessary to pay the annual cost; and

(e) Whether the consolidation is contingent upon approval of the financial obligation as debt.

(2) If the court finds that the board's request complies with the requirements of subsection (1) of this section, the court shall grant the board's request and include in its order entered pursuant to section 32-1-602 (2)(e), that the electors of the consolidating special district vote separately on each financial obligation proposed to be treated as debt.

(3) If approved as debt by the electors at the consolidation election, the financial obligation of the consolidating special district, which becomes part of a consolidated district, shall be paid and discharged by the taxpayers having taxable property within the boundaries of the consolidating special district which incurred the obligation or maintained the pension plan to which the accrued unfunded liability attaches. The board of the consolidated district shall levy a general property tax annually for so long as may be necessary to retire the elector-approved debt.

(4) Nothing in this section shall prevent a consolidated district from being bound by preconsolidation agreements which have been entered into between or among consolidating districts and which have become part of the terms and conditions of consolidation as set forth in the court order under section 32-1-603 (4) including the assumption of any or all of the financial obligations of the consolidating special districts by the consolidated special district.

Source: L. 93: Entire section added, p. 563, § 2, effective April 30.

32-1-607. Powers.

(1) Subject to the provisions of section 32-1-602 (2)(e), a consolidated district has all of the rights, powers, and authorities which were granted by statute to each of the special districts which are consolidated and may have the rights, powers, and authorities granted to a metropolitan district. Any consolidated district which embraces any special district is not limited in its exercise of the rights, powers, and authorities granted in this section because the full extent of the purposes and powers to be exercised by the consolidated district was not stated or was stated otherwise in any organization petition, court order, or ballot of any one or more of the special districts so consolidated, but a consolidated district established on or after July 1, 1985, is limited in its exercise of the rights, powers, and authorities granted or validated in this section to the extent the purposes and powers to be exercised by the consolidated district are stated in the consolidation resolution or subsequently approved by a vote of the eligible electors of the

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consolidated district.

(2) The consolidated district, upon order of the court as provided in section 32-1-603 (4), shall immediately become the owner of and entitled to receive, hold, sue for, and collect all moneys, funds, taxes, levies, assessments, fees, and charges and all property and assets of any kind or nature owned, leased, or claimed by or due to any of the special districts so consolidated. The obligations of the special districts, other than bonded indebtedness and elector-approved debt, shall be assumed by the consolidated district and paid by the consolidated district. Inclusions and exclusions of lands to and from the consolidated district shall be governed by the provisions of parts 4 and 5 of this article.

(3) In the case of a district into which services are consolidated, the district shall have all of the rights, powers, and authorities which are granted by statute for each of the consolidated services. Unless all of the rights, powers, and authorities of a metropolitan district are granted pursuant to section 32-1-602 (2)(e), if the consolidated district is authorized to provide two or more of the services specified in section 32-1-1004 (2), the consolidated district shall have only those rights, powers, and authorities granted and shall be subject to the limitations applicable to other single-purpose special districts providing a similar service. Any consolidated district which embraces any special district is not limited in its exercise of the rights, powers, and authorities granted in this section because the full extent of the purposes and powers to be exercised by the consolidated district was not stated or was stated otherwise in any organization petition, court order, or ballot of any one or more of the special districts so consolidated, but the consolidated district is limited in its exercise of the rights, powers, and authorities granted or validated in this section to the extent the purposes and powers to be exercised are stated in the consolidated resolution or subsequently approved by a vote of the eligible electors of the consolidated district.

(4) A consolidated district, upon order of the court as provided in section 32-1-603 (4), shall immediately become the owner of and entitled to receive, hold, sue for, and collect all moneys, funds, levies, assessments, fees, and charges and all properties and assets of any kind or nature owned, leased, or claimed by or due to any of the special districts so consolidated for the services consolidated, subject to the terms of a preconsolidation agreement, contract, or bond covenant affecting the conveyance. The obligations of the special districts for the services consolidated, other than bonded indebtedness and elector-approved debt, shall be assumed by the consolidated district and paid by the district. Inclusions and exclusions of lands to and from the consolidated district shall be governed by the provisions of parts 4 and 5 of this article.

(5) Except as provided in this part 6, any special district which consolidates less than all of its services into a consolidated district may remain in existence and not be affected by the consolidation proceeding or may, on motion of the board after notice to the court and after providing for the payment of any outstanding indebtedness, be dissolved. If the special district remains in existence, such special district shall no longer possess the power to provide the services so consolidated. If such special district is authorized to provide only a single remaining service, it shall have only those rights, powers, and authorities granted and shall be subject to the

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limitations applicable to other single-purpose special districts providing a similar service.

(6) No consolidation proceeding under this part 6 is subject to the provisions of part 2 of this article; except that any consolidation proceeding under this part 6 that will result in the creation of a consolidated district that will provide new or different services within the boundaries of any existing municipality as compared to the services that are either being provided or that are authorized to be provided to the municipality by one or more of the consolidating special districts as of the commencement of the consolidation proceedings subjects the proposed consolidated district to the provisions of part 2 of this article. In such event, the provisions of part 2 of this article relating to the organization of a proposed special district must be complied with by the special district initiating the consolidation after adoption of the consolidation resolution and concurring resolutions but prior to filing such resolutions with the court as specified in section 32-1-602 (2)(c); except that the provisions of section 32-1-203 (2)(b) are not applicable when existing service is being provided by a consolidating special district. Any such municipality is an interested party and entitled to notice of the proceedings for all of the purposes provided in part 2 of this article and in this part 6. If the board of either the initiating special district or a concurring special district disapproves the final action taken on such service plan, the consolidation proceeding must be terminated.

Source: L. 81: Entire article R&RE, p. 1567, § 1, effective July 1. **L. 85:** (1) amended and (3) to (6) added, p. 1116, § 5, effective July 1. **L. 92:** (1) and (3) amended, p. 882, § 116, effective January 1, 1993. **L. 93:** (2) and (4) amended, p. 565, § 3, effective April 30. **L. 2013:** (6) amended, (HB 13-1302), ch. 317, p. 1733, § 1, effective August 7.

Editor's note: This section is similar to former § 32-1-118 as it existed prior to 1981.

32-1-608. Subsequent consolidations.

Any consolidated district may initiate proceedings for the consolidation of one consolidated district with another special district, whether or not a consolidated district, as provided in section 32-1-602. Such proceedings shall proceed in accordance with this part 6 without regard to the fact that the districts have been previously consolidated.

Source: L. 81: Entire article R&RE, p. 1567, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-120 as it existed prior to 1981.

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PART 7
DISSOLUTION

32-1-701. Initiation - petition - procedure.

(1) Whenever the majority of all the members of the board of a special district deems it to be in the best interests of such district that it be dissolved, the board shall file a petition for dissolution with the court.

(2) (a) The board, promptly and in good faith, shall also take the necessary steps to dissolve the special district whenever the lesser of five percent of the eligible electors or two hundred fifty eligible electors or, in case of special districts larger than twenty-five thousand persons, three percent of the eligible electors of the district or the division file an application with the board to dissolve the special district pursuant to the provisions of this part 7. In that case the board shall file a petition for dissolution with the court within sixty days after the date of filing of the application by the eligible electors. The petition for dissolution shall request an election and shall include a report on the steps which have been taken to comply with the requirements of section 32-1-702. The board, at the time it files a petition for dissolution pursuant to this subsection (2), may request that the proceedings under sections 32-1-703 and 32-1-704 be continued until further progress has been made in complying with the requirements of section 32-1-702.

(b) No application to dissolve a special district shall be circulated until it has been approved as following as nearly practicable the requirements of section 31-11-106, C.R.S., for municipal petitions. The application shall be submitted to the secretary of the board of directors of the special district. The secretary shall approve the application as to form or notify the person who submitted the application of any deficiencies in the form of the application by the close of the fifteenth business day following the submission of such application. The secretary shall mail written notice of the approval or deficiencies to the person who submitted the application within two days after the date the action is taken.

(c) Any signature that is affixed to an application to dissolve a special district prior to the date that the written approval notice is mailed pursuant to paragraph (b) of this subsection (2) shall be invalid.

(d) No application to dissolve a special district filed by the eligible electors in accordance with paragraph (a) of this subsection (2) shall be accepted by the board of directors of such district more than ninety days after the date that the written approval notice is mailed pursuant to paragraph (b) of this subsection (2).

(3) If at least eighty-five percent of the territory encompassed by a special district lies within

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the corporate limits of a municipality, the governing body of such municipality may file an application with the board to dissolve the special district, and the board, promptly and in good faith, shall take the necessary steps to dissolve such district in accordance with the procedures specified in subsection (2) of this section.

(3.5) If the territory encompassed by a special district lies wholly within the boundaries of a county, the board of county commissioners of any such county may file an application with the special district's board of directors to dissolve the special district, and the special district's board of directors, promptly and in good faith, shall take the necessary steps to dissolve the district in accordance with the procedures specified in subsection (2) of this section; except that, if more than eighty-five percent of the territory encompassed by the special district lies within the corporate limits of one or more municipalities, the special district's board of directors shall not take any action on the application unless the governing bodies of all such municipalities have consented to or joined the application.

(3.7) If the territory encompassed by a special district lies within the boundaries of two or more counties, the board of county commissioners of each of the counties may jointly file an application with the special district's board of directors to dissolve the special district, and the special district's board of directors, promptly and in good faith, shall take the necessary steps to dissolve the district in accordance with the procedures specified in subsection (2) of this section; except that, if more than eighty-five percent of the territory encompassed by the special district lies within the corporate limits of one or more municipalities, the special district's board of directors shall not take any action on the application unless the governing bodies of all such municipalities have consented to or joined the application. The application must include the consent of such counties to assume the responsibilities for providing the services that had been provided by the special district in their respective jurisdictions or evidence of an agreement to provide the services on a contractual basis.

(4) If the territory encompassed by a special district lies wholly within the boundaries of a regional service authority and if such service authority provides the same service as that provided by the special district, the board of directors of any such service authority may file an application with the board to dissolve the special district, and the board, promptly and in good faith, shall take the necessary steps to dissolve such district in accordance with the procedures specified in subsection (2) of this section.

(5) If the territory encompassed by a special district lies within the boundaries of two or more regional service authorities and if such service authorities provide the same service as that provided by the special district, the two or more service authorities may file jointly an application with the board to dissolve the special district, and the board, promptly and in good faith, shall take the necessary steps to dissolve such district in accordance with the procedures specified in subsection (2) of this section. The application must include the consent of such service authorities to assume the responsibilities for providing the service in their respective jurisdictions or the consent of one regional service authority to provide the service on a

contractual basis.

(6) Any application filed with the board to dissolve a special district under subsection (2), (3), (3.5), (3.7), (4), or (5) of this section must be accompanied by a cash bond in the amount of three hundred dollars to cover the expenses connected with the proceedings if the dissolution is not effected.

Source: L. 81: Entire article R&RE, p. 1568, § 1, effective July 1. **L. 87:** (2) amended, p. 1236, § 1, effective May 8. **L. 91:** (2) amended, p. 788, § 14, effective June 4. **L. 92:** (2) amended, p. 882, § 117, effective January 1, 1993. **L. 99:** (2) amended, p. 448, § 2, effective August 4. **L. 2022:** (3.5) and (3.7) added and (5) and (6) amended, (HB 22-1097), ch. 31, p. 176, § 1, effective August 10.

Editor's note: This section is similar to former § 32-1-603 as it existed prior to 1981.

32-1-702. Requirements for dissolution petition.

(1) A petition for dissolution must generally describe the territory embraced in the special district, must have a map showing the special district, a current financial statement of the special district, and a plan for final disposition of the assets of the special district and for payment of the financial obligations of the special district, must state whether or not the services of the special district are to be continued and, if so, by what means, and must state whether the existing board or a portion thereof is to continue in office, subject to court appointment to fill vacancies. Said petition may provide for the regional service authority board, the board of county commissioners, or the governing body of the municipality to act as the board in accordance with section 32-1-707.

(2) The special district's current financial statement shall be accompanied by adequate evidence of compliance with the requirements of subsection (3) of this section.

(3) The petition for dissolution shall provide for one of the following:

(a) A certificate that the special district has no financial obligations or outstanding bonds;

(b) A plan for dissolution stating that there are financial obligations or outstanding bonds but that the special district will not continue in existence and specifically providing that funds or securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., will be placed in escrow, prior to dissolution, in a state or national bank within this state having trust powers and which is a member of the federal deposit insurance corporation and stating that such funds or securities will be sufficient for the payment of the financial obligations and outstanding bonds and all expenses relating thereto, including charges of any escrow agent;

(c) A plan for dissolution stating that there are financial obligations or outstanding bonds and

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specifically providing that the special district will continue in existence to such extent as is necessary to adequately provide for the payment of such financial obligations and outstanding bonds.

(4) The petition for dissolution shall also provide for one of the following:

(a) A statement that the services of the special district will not be continued within such district;

(b) (I) A plan for dissolution specifically providing that services are to be continued within the special district by one or more regional service authorities, municipalities, counties, intergovernmental authorities formed and operated under part 2 of article 1 of title 29, C.R.S., or other special districts, or any combination thereof, and incorporating an agreement with such regional service authority, municipality, county, intergovernmental authority, or other special district, or any combination thereof, under which responsibility for all services presently provided by the special district will be assumed by such entity. Such agreement shall provide for the operation and maintenance of the system or facilities of the special district by the regional service authority, municipality, county, intergovernmental authority, or other special district, provisions for service, rates, and charges, and, if applicable, provisions concerning acquisition of the special district's system or facilities, consolidation or inclusion of territory, and procedures for contract modification, employee rights, and retirement benefits. Such agreement may include provisions for certification of levies by the special district continuing in existence under paragraph (c) of subsection (3) of this section, the contracting regional service authority, municipality, county, intergovernmental authority, or other special district providing the services. Any agreement concerning fire protection districts entered into pursuant to this subsection (4) shall include provisions for the continuation of paid employees' rights pursuant to section 32-1-1002 (2) and the retirement benefits of paid firefighters as provided in parts 2 and 4 of article 30.5 and article 31 of title 31, C.R.S., and the retirement benefits of volunteer firefighters under part 11 of article 30 of title 31, C.R.S.

(II) If a portion of a special district is located within the boundaries of a municipality and a dissolution proceeding has been initiated by the special district, the board shall hold a public hearing for residents in the unincorporated area of the special district to express their views concerning the provision of services to the unincorporated portions of the special district at the time of negotiation of the agreement or any modification thereof.

(5) Any plan for dissolution shall include adequate provision for continuance of existing services, and the financing thereof, to all areas of the special district being dissolved if such services are essential for the health, welfare, and safety of those residents of the special district being dissolved.

Source: L. 81: Entire article R&RE, p. 1569, § 1, effective July 1. **L. 89:** (3)(b) amended, p. 1116, § 31, effective July 1. **L. 91:** (4)(b)(I) amended, p. 796, § 1, effective April 10. **L. 95:**

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(4)(b)(I) amended, p. 1385, § 18, effective June 5. **L. 96:** (4)(b)(I) amended, p. 942, § 8, effective May 23. **L. 2022:** (1) amended, (HB 22-1097), ch. 31, p. 177, § 2, effective August 10.

Editor's note: This section is similar to former § 32-1-604 as it existed prior to 1981.

Cross references: For the legislative declaration contained in the 1995 act amending subsection (4)(b)(I), see section 1 of chapter 254, Session Laws of Colorado 1995.

32-1-703. Notice of filing petition.

(1) Upon filing of the petition for dissolution by the board with the court, the court shall give notice by publication reciting the fact that a petition for dissolution has been filed and reciting the applicable financial provision set forth under section 32-1-702 (3) and the applicable service provision set forth under section 32-1-702 (4).

(2) Such notice shall specify the time and place of a hearing, to be held within fifty days after filing of said petition, and shall provide that any interested party may appear and be heard on the sufficiency of the petition for dissolution or on the adequacy of the applicable financial and service provisions.

(3) The court shall also forthwith cause a copy of said notice to be mailed to the board of county commissioners of each county having territory within the special district and to the governing body of each municipality having territory located within a radius of three miles of the special district boundaries.

Source: L. 81: Entire article R&RE, p. 1570, § 1, effective July 1.

Editor's note: This section is similar to former §§ 32-1-605 and 32-3-125 as they existed prior to 1981.

32-1-704. Conditions necessary for dissolution - permissible provisions - hearings - court powers.

(1) Prior to the court hearing on the petition for dissolution, the governing body of any municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., other special district, or regional service authority which is a party to an agreement to render services and which is assuming the responsibility to provide those services in the special district to be dissolved shall submit to the jurisdiction of the court by a written entry of appearance.

(2) Hearings may be continued by the court on the petition for dissolution as necessary to complete the proceedings authorized by this part 7. No petition shall be declared void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to

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the facts by correcting any errors in the description of the territory or in any other particular.

(3) (a) Subject to the provisions of paragraphs (b) and (c) of this subsection (3), if the court finds that the special district has no financial obligations or outstanding bonds or that the special district's financial obligations and outstanding bonds will be adequately provided for prior to dissolution by means of escrow funds or securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., to secure payment thereof, that the petition for dissolution meets the requirements of this part 7, and that an adequate plan exists for continuation of services, if required, the court shall order an election in the special district on the question of dissolution.

(b) (I) Subject to the provisions of subsection (3)(c) of this section, the court shall enter an order dissolving the special district pursuant to section 32-1-707 without an election if the special district lies wholly within the corporate limits of the municipality, if the special district has no financial obligations or outstanding bonds, and if the special district board and the governing body of the municipality consent to the dissolution.

(II) Subject to the provisions of subsection (3)(c) of this section, the court shall enter an order dissolving the special district pursuant to section 32-1-707 without an election if the special district lies wholly within the county, if the special district has no financial obligations or outstanding bonds, and if the special district board and the board of county commissioners consent to the dissolution, and, if more than eighty-five percent of the territory encompassed by the special district lies within the corporate limits of one or more municipalities, the governing bodies of all such municipalities also consent to the dissolution.

(c) If, at the court hearing on the petition for dissolution, the lesser of ten percent or one hundred of the eligible electors of the special district petition the court for a special election to be held on the question of dissolution of the special district, the court shall order an election in the special district on the question of dissolution.

(4) (a) If the court finds the special district has financial obligations or outstanding bonds and no escrow plan, the court shall determine whether the plan for dissolution, as submitted, adequately provides for payment of the financial obligations and outstanding bonds of the special district.

(b) If the court determines that the plan for dissolution adequately provides for the payment of the financial obligations and outstanding bonds of the special district, that the petition for dissolution meets the requirements of this part 7, and that an adequate plan exists for continuance of services, if required, the court shall order an election to be held in the special district on the question of dissolution.

(c) If, at any time after the filing of a petition for dissolution under section 32-1-701, the court determines that no agreement can be reached concerning the plan for dissolution under section 32-1-702 (4)(b) or that any other requirements of this part 7 cannot be met, and that the

board has acted in good faith, it shall dismiss the dissolution proceedings. If, however, the special district is entirely within the municipality and the parties are unable to reach an agreement, the court may impose a plan for dissolution under section 32-1-702 at the request of either the municipality or the special district and shall order an election to be held in the special district on the question of dissolution.

Source: L. 81: Entire article R&RE, p. 1570, § 1, effective July 1. **L. 89:** (3)(a) amended, p. 1117, § 32, effective July 1. **L. 91:** (1) amended, p. 797, § 2, effective April 10. **L. 92:** (3)(c) amended, p. 883, § 118, effective January 1, 1993. **L. 2022:** (3)(b) amended, (HB 22-1097), ch. 31, p. 177, § 3, effective August 10.

Editor's note: This section is similar to former § 32-1-606 as it existed prior to 1981.

32-1-705. Election notice.

When an election is ordered by the court, the court shall give notice pursuant to section 1-13.5-510, C.R.S.

Source: L. 81: Entire article R&RE, p. 1571, § 1, effective July 1. **L. 92:** Entire section amended, p. 883, § 119, effective January 1, 1993. **L. 93:** Entire section amended, p. 1439, § 135, effective July 1. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 787, § 87, effective June 6.

Editor's note: This section is similar to former § 32-1-607 as it existed prior to 1981.

32-1-706. Conduct of election.

It is the duty of the secretary to administer the election, subject to court supervision. The election shall be conducted pursuant to article 13.5 of title 1.

Source: L. 81: Entire article R&RE, p. 1571, § 1, effective July 1. **L. 92:** Entire section amended, p. 883, § 120, effective January 1, 1993. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 787, § 88, effective June 6. **L. 2021:** Entire section amended, (SB 21-160), ch. 133, p. 542, § 13, effective September 7.

Editor's note: This section is similar to former § 32-1-608 as it existed prior to 1981.

32-1-707. Order of dissolution - conditions attached.

(1) (a) If a majority of the eligible electors voting at the election approve the question of dissolution, the judge shall enter an order dissolving the special district for all purposes or for all

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purposes except those reserved in the plan, as the case may be.

(b) The order of dissolution shall:

(I) State that there are no financial obligations or outstanding bonds or that any such financial obligations or outstanding bonds are adequately secured by escrow funds or securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.;

(II) If the special district has financial obligations or outstanding bonds, incorporate the applicable financial provisions of the findings of the court accepting the plan for dissolution entered into pursuant to section 32-1-704 (4);

(III) Incorporate the applicable service provisions of the findings of the court accepting the plan for dissolution entered into pursuant to section 32-1-704 (3) or (4).

(2) (a) Whenever the special district will continue in existence pursuant to the provisions of section 32-1-702 (3)(c), the court may provide that all or certain directors of the board of the special district being dissolved remain in office to perform duties pursuant to subsections (3) and (4) of this section. The remaining directors of the board shall not be subject to election. Any vacancies on the board shall be filled by appointment by the court.

(b) If a portion of the special district being dissolved lies outside the contracting regional service authority, municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., or other special district providing the services, the court, from time to time, shall appoint directors to the board so that proportionate representation is provided, taking into account the size, population, and valuation for assessment within and without the regional service authority, municipality, county, intergovernmental authority, or other special district.

(c) If the special district being dissolved lies entirely within the corporate limits of a municipality and such municipality is providing the same services within the area of the special district being dissolved, the court shall order that the governing body of such municipality shall serve as the board of the special district to perform the duties specified in this section.

(3) If the special district is to continue in existence for the purpose of the payment of financial obligations or outstanding bonds, the order of dissolution shall provide that:

(a) The board shall be responsible for setting rates, tolls, fees, or charges and certifying to the board of county commissioners the amount of revenue to be raised by the annual mill levy of the special district necessary for payment of the special district's financial obligations and outstanding bonds; and

(b) The contracting regional service authority, municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., or other special district providing the services shall be responsible for fixing the rates, tolls, fees, or charges needed to

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finance the services being provided pursuant to the provisions of section 32-1-702 (4)(b).

(4) (a) In any case in which an agreement has been made for continuation of services within the special district pursuant to the provisions of section 32-1-702 (4)(b), the court may authorize the board to continue in existence for the purpose of assuring the performance of any condition of such agreement, including negotiations relating to any future modifications of the agreement, procedures for which are provided in the original agreement for services.

(b) The court's order may in such case specify that its jurisdiction over the dissolution continues for the purpose of considering any future modifications of the agreement or other questions concerned with performance of the agreement.

(5) A certified copy of the order of dissolution shall be filed with the county clerk and recorder of the county or counties in which the special district is located and with the division by the clerk of the court. The costs of such filing shall be paid with remaining funds of the district. If there are no remaining funds of the district, the division may claim the exemption from payment of recording fees imposed in section 30-1-103, C.R.S., at the time the copy of the order is filed for recording.

(6) The order of dissolution shall be final and conclusive against all persons; except that an action may be instituted by the state of Colorado in the nature of quo warranto commenced within thirty-five days after the order of dissolution. The dissolution of said district shall not be directly or collaterally questioned in any suit, action, or proceeding except as expressly authorized in this subsection (6).

Source: L. 81: Entire article R&RE, p. 1572, § 1, effective July 1. **L. 89:** (1)(b)(I) amended, p. 1117, § 33, effective July 1. **L. 91:** (2)(b) and (3)(b) amended, p. 797, § 3, effective April 10. **L. 92:** (1)(a) and (2)(a) amended, p. 883, § 121, effective January 1, 1993. **L. 2012:** (6) amended, (SB 12-175), ch. 208, p. 882, § 148, effective July 1. **L. 2014:** (5) amended, (HB 14-1073), ch. 30, p. 177, § 5, effective July 1.

Editor's note: This section is similar to former §§ 32-1-609 and 32-1-611 as they existed prior to 1981.

32-1-708. Disposition of remaining funds - unpaid tax or levies.

(1) If services are to be continued within the special district, all funds remaining in the treasury of such special district in excess of all financial obligations and outstanding bonds shall be utilized, upon completion of the requirements for dissolution, to reduce the rates, tolls, fees, and charges fixed by the contracting municipality, county, intergovernmental authority formed and operated under part 2 of article 1 of title 29, C.R.S., other special district, or regional service authority to finance the services continued in the special district. If services are not to be continued within the special district, such funds shall be divided among the municipalities and

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counties in which the special district is located, pro rata, as the valuation for assessment of taxable property in the parts of the special district lying in each municipality and unincorporated portions of each county bears to the total valuation for assessment of the taxable property of the special district as determined by the respective county assessors for the preceding tax year.

(2) All outstanding and unpaid tax sales and levies of a dissolved special district shall be valid and remain a lien against the property against which they are assessed or levied until paid, subject, however, to the limitations of liens of tax certificates and of certificates of purchase provided by general law. The board of county commissioners has the same power to enforce the collection of all outstanding tax sales of the special district as the special district would have had if it had not been dissolved. Taxes paid or collected after dissolution shall be distributed in the same manner as provided in subsection (1) of this section.

Source: L. 81: Entire article R&RE, p. 1573, § 1, effective July 1. **L. 91:** (1) amended, p. 797, § 4, effective April 10.

Editor's note: This section is similar to former § 32-1-612 as it existed prior to 1981.

32-1-709. Dissolution of health service district - limitation.

Any health service district organized pursuant to part 3 of this article may be dissolved in the manner provided in this part 7, but no such health service district shall be dissolved within a one-year period from the date of the entry of an order declaring said district organized or one year from the date of final determination of any petition to set aside such order, whichever date is later.

Source: L. 81: Entire article R&RE, p. 1574, § 1, effective July 1. **L. 96:** Entire section amended, p. 474, § 15, effective July 1.

Editor's note: This section is similar to former § 32-5-215 as it existed prior to 1981.

32-1-710. Dissolution by administrative action.

(1) The division shall notify a special district by certified mail of the division's intent to certify the district dissolved if:

(a) (I) Except as provided in section 32-1-905 (2.5), the district has failed to hold or properly cancel an election pursuant to this article;

(II) The district has failed to adopt a budget, pursuant to section 29-1-108, C.R.S., for two consecutive years;

(III) The district has failed to comply with part 6 of article 1 of title 29, C.R.S., for two

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consecutive years; or

(IV) The district has not provided or attempted to provide any of the services or facilities for which the district was organized for two consecutive years; and

(b) The district has no outstanding financial obligations.

(2) (a) The division may declare the special district dissolved if, within thirty days of the notice provided pursuant to subsection (1) of this section, the district has failed to demonstrate to the division that the district has performed such statutory or service responsibility or will proceed to perform such responsibilities within a time period agreed to by the division and the district.

(b) If the district has failed to hold or properly cancel an election, no board has been appointed pursuant to section 32-1-905 (2.5), and there will be no interruption of services being provided by the district, it shall be presumed that the district has failed to demonstrate to the division that it has performed its statutory or service responsibility or will proceed to perform such responsibilities.

(3) Following the division's declaration of dissolution, the division shall submit the declaration to the court for certification of the district's dissolution. The court shall make a determination on the division's declaration within thirty days after the declaration has been submitted and shall order the disposition of the assets, if any, of the district in accordance with section 32-1-708. In the event that the court determines that the district is not inactive, it may terminate the dissolution proceeding. The division shall give notice that it has applied to the court for certification of the declaration of dissolution to the following parties: The county clerk and recorder, the board of county commissioners, and the assessor of each county in which the district is located; the governing body of any municipality in which the special district is located; and the special district.

Source: L. 85: Entire section added, p. 1021, § 7, effective July 1. **L. 87:** (1)(a)(I) and (2) amended, p. 1237, § 1, effective May 16. **L. 90:** (1)(a)(II) amended, p. 1436, § 4, effective January 1, 1991.

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PART 8
ELECTIONS

Editor's note: This article was repealed and reenacted in 1981, and this part 8 was subsequently repealed and reenacted in 1992, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this part 8 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume and the editor's note following the article heading. Former C.R.S. section numbers prior to 1992 are shown in editor's notes following those sections that were relocated.

32-1-801. Legislative declaration - applicability.

It is hereby declared that the orderly conduct of elections of special districts will serve a public use and will promote the health, safety, security, and general welfare of the people of the state of Colorado. Therefore, all elections shall be held pursuant to articles 1 to 13.5 of title 1, C.R.S., unless otherwise provided.

Source: L. 92: Entire part R&RE, p. 884, § 122, effective January 1, 1993. **L. 2016:** Entire section amended, (SB 16-189), ch. 210, p. 787, § 89, effective June 6.

Editor's note: This section is similar to former § 32-1-801 as it existed prior to 1992.

32-1-802. Acts and elections conducted pursuant to provisions which refer to qualified electors.

Any elections, and any acts relating thereto, carried out under this part 8, which were conducted prior to July 1, 1987, pursuant to provisions which referred to a qualified elector rather than an eligible elector and which were valid when conducted, shall be deemed and held to be legal and valid in all respects.

Source: L. 92: Entire part R&RE, p. 884, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-801.5 as it existed prior to 1992.

32-1-803. Acts and elections conducted pursuant to provisions which refer to registered electors.

Any elections and any acts relating to those elections, carried out under this part 8 which were conducted prior to July 1, 1992, and which were valid when conducted, shall be held to be legal and valid in all respects.

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Source: L. 92: Entire part R&RE, p. 884, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-801.5 as it existed prior to 1992.

32-1-803.5. Organizational election - new special district.

At any election for the organization of a new special district, the court shall also order the submission of the proposition of issuing general obligation bonds or creating other general obligation indebtedness or any question or questions necessary to implement section 20 of article X of the state constitution as applied to the new special district, if the petition filed pursuant to section 32-1-301 requests that such questions be submitted at the organizational election. The order of the court shall make the determinations required by section 32-1-1101 (2) and (3)(a) and require the designated election official appointed by the court pursuant to section 32-1-305.5 (1) to conduct the election in accordance with section 20 of article X of the state constitution.

Source: L. 93: Entire section added, p. 1439, § 136, effective July 1. **L. 2014:** Entire section amended, (HB 14-1164), ch. 2, p. 71, § 31, effective February 18.

Editor's note: This provision was added by House Bill 93-1255, chapter 258, Session Laws of Colorado 1993, as section 32-1-802 (6) but was renumbered on revision to give proper effect and location.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

32-1-804. Board to conduct elections - combined election - time for special election.

(1) After a special district is organized and the first board is elected, the board shall govern the conduct of all subsequent regular and special elections of the special district and shall render all interpretations and make all decisions as to controversies or other matters arising in the conduct of the elections. The board in its discretion, but no more frequently than every four years, may reestablish the boundaries of director districts created pursuant to section 32-1-301 (2)(f) so that the director districts have, as nearly as possible, the same number of eligible electors.

(2) All powers and authority granted to the board by this part 8 for the conduct of regular or special elections may be exercised in the absence of the board by the secretary or by an assistant secretary appointed by the board. The person named by the board who is responsible for the conducting of the election shall be the designated election official.

Source: L. 92: Entire part R&RE, p. 884, § 122, effective January 1, 1993.

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Editor's note: This section is similar to former § 32-1-803 as it existed prior to 1992.

32-1-804.1. Call for nominations. (Repealed)

Source: L. 99: Entire section added, p. 449, § 3, effective August 4. **L. 2014:** Entire section repealed, (HB 14-1164), ch. 2, p. 77, § 51, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

32-1-804.3. Candidates for director - self-nomination and acceptance form. (Repealed)

Source: L. 99: Entire section added, p. 449, § 3, effective August 4. **L. 2011:** (4) amended, (HB 11-1124), ch. 105, p. 328, § 1, effective April 13. **L. 2014:** Entire section repealed, (HB 14-1164), ch. 2, p. 77, § 51, effective February 18.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

32-1-805. Time for holding elections - type of election - manner of election - notice. (Repealed)

Source: L. 92: Entire part R&RE, p. 885, § 122, effective January 1, 1993. **L. 94:** (2) amended, p. 1195, § 100, effective July 1. **L. 95:** (2) amended, p. 859, § 109, effective July 1. **L. 2007:** (2) amended, p. 922, § 2, effective May 17; (1) amended and (4) added, p. 1191, § 10, effective July 1. **L. 2009:** (5) added, (SB 09-087), ch. 325, p. 1732, § 4, effective September 1. **L. 2011:** (5)(b) amended and (5)(b.5) and (5)(b.7) added, (SB 11-057), ch. 123, p. 385, § 1, effective April 20. **L. 2013:** (5)(a) repealed and (5)(b) amended, (HB 13-1303), ch. 185, pp. 752, 751, §§ 138, 133, effective May 10. **L. 2014:** Entire section repealed, (HB 14-1164), ch. 2, p. 77, § 51, effective February 18.

Editor's note: This section was similar to former § 32-1-803 as it existed prior to 1992.

Cross references: For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

32-1-805.5. Ranked voting methods.

(1) Notwithstanding any provision of this article to the contrary, a special district may use a ranked voting method, as defined in section 1-1-104 (34.4), C.R.S., to conduct a regular election to elect directors of the special district in accordance with section 1-7-1003, C.R.S., and the rules

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adopted by the secretary of state pursuant to section 1-7-1004 (1), C.R.S.

(2) A special district conducting an election using a ranked voting method may adapt the requirements of the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S., including requirements concerning the form of the ballot, the method of marking the ballot, the procedure for counting ballots, and the form of the election judges' certificate, as necessary for compatibility with the ranked voting method.

Source: L. 2008: Entire section added, p. 1253, § 5, effective August 5.

32-1-806. Persons entitled to vote at special district elections.

(1) No person shall be permitted to vote in any election unless that person is an eligible elector as defined in section 32-1-103 (5)(a).

(2) Any person desiring to vote at any election as an eligible elector pursuant to section 32-1-103 (5)(a)(II) shall sign a self-affirmation that the person is an elector of the special district. The self-affirming oath or affirmation must be on a form that contains in substance the following:

"I, (printed name) , who reside at (address) , am an elector of this (name of special district) district and desire to vote at this election. I do solemnly swear (or affirm) that I am registered to vote in the state of Colorado and qualified to vote in this special district election as:
_____ A resident of the district or area to be included in the district; or
_____ The owner of taxable real or personal property situated within the boundaries of the special district or area to be included within the special district; or
_____ A person who is obligated to pay taxes under a contract to purchase taxable property in the special district or the area to be included within the special district; or
_____ The spouse or civil union partner of (name of spouse or civil union partner) who is the owner of taxable real or personal property situated within the boundaries of the special district or area to be included within the special district.
I have not voted previously at this election.
Date _____
Signature of elector _____."

(3) For electors who vote at any election by mail ballot, the affidavit on the envelope of the ballot as required by title 1, C.R.S., may be substituted for the self-affirming oath or affirmation required by subsection (2) of this section.

(4) A person who completes the self-affirming oath or affirmation required by subsection (2) of this section shall be permitted to vote, unless such person's right to vote is challenged.

Source: L. 92: Entire part R&RE, p. 885, § 122, effective January 1, 1993. **L. 93:** Entire section amended, p. 1439, § 137, effective July 1. **L. 94:** (2) amended, p. 1195, § 101, effective July 1. **L. 95:** (3) added, p. 859, § 110, effective July 1. **L. 96:** Entire section amended, p. 1772, § 74,

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effective July 1. **L. 2007:** (3) amended, p. 1798, § 72, effective June 1. **L. 2014:** (3) amended, (HB 14-1164), ch. 2, p. 75, § 46, effective February 18. **L. 2016:** (2) amended, (SB 16-142), ch. 173, p. 592, § 79, effective May 18.

Editor's note: This section is similar to former § 32-1-804 as it existed prior to 1992.

Cross references: (1) For the requirement of registration before voting in a primary, general, or congressional vacancy election, see § 1-2-201.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

Nonresidents do not have fundamental right to vote in elections in this state. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

The fact that a nonresident owns land in this state does not create a fundamental right to political participation in decisions which affect that land. While nonresident landowners may be enfranchised, there is nothing in the constitution that requires they be given voting rights in a political subdivision where they do not live. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

The decision to grant the franchise to residents of Colorado owning property in a special district but not residing there, while denying the franchise to owners of such property living outside Colorado, does not violate the equal protection guarantee of the state constitution. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

Constitutional challenge to this section on grounds that denying corporate entities the right to vote on the formation of a special district violates the equal protection clause was premature as no petition for organization was pending before district court. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

32-1-807. Nonapplicability of criminal penalties.

Election offenses and penalties prescribed by parts 2 and 3 of article 13 of title 1, C.R.S., do not apply to elections authorized under this title.

Source: L. 92: Entire part R&RE, p. 885, § 122, effective January 1, 1993.

Editor's note: This section is similar to former § 32-1-833 as it existed prior to 1992.

32-1-808. Transfer of property title to qualify electors - limitations - validation.

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(1) (a) No person shall knowingly take or place title to taxable property in the name of another or enter into a contract to purchase or sell taxable property for the purpose of attempting to qualify such person as an eligible elector at any special district election. Any ballot cast in violation of this subsection (1) as determined in an election contest conducted pursuant to article 13.5 of title 1, C.R.S., shall be void.

(b) No person shall aid or assist any person in doing any of the acts described in paragraph (a) of this subsection (1).

(2) (a) A person may take or place title to taxable property in the name of another or enter into a contract to purchase or sell taxable property for the purpose of attempting to qualify such person as an eligible elector for any special district election under the following circumstances:

(I) A vacancy exists on the board of the special district and, within ten days of the publication of notice of such vacancy, no otherwise qualified eligible elector files a letter of interest in filling such position with the board;

(II) In any organizational election at which there are more than ten eligible electors, on or after the second day before the filing deadline for self-nomination and acceptance forms or letters pursuant to section 32-1-305.5 (4), the number of otherwise qualified eligible electors who have filed such self-nomination and acceptance forms or letters is less than the number of special district director offices to be voted upon at such election;

(III) There are less than eleven eligible electors as of any date before an organizational election; or

(IV) On or after the day after the filing deadline for self-nomination and acceptance forms or letters pursuant to section 1-13.5-303, C.R.S., before any regular special district election, the number of otherwise qualified eligible electors who have filed self-nomination and acceptance forms or letters pursuant to section 1-13.5-303, C.R.S., is less than the number of special district director offices to be voted upon at the election.

(b) (I) Notwithstanding any other provision of law, no person shall place title to taxable property in the name of another or enter into a contract to sell taxable property for the purpose of attempting to qualify more than the number of persons who are necessary to be eligible electors in order to:

(A) Fill a vacancy on a board except as permitted by the provisions of subparagraph (I) of paragraph (a) of this subsection (2); or

(B) Become a candidate for director in a special district election except as permitted by the provisions of subparagraphs (II), (III), and (IV) of paragraph (a) of this subsection (2).

(II) The incidental qualification of the spouse of a person as an eligible elector pursuant to

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section 32-1-103 (5)(a)(II) shall not constitute a qualification of more than the number of persons necessary to be eligible electors under subparagraph (I) of this paragraph (b).

(3) It shall not constitute a violation of subsection (1) of this section for a person to take or place title to taxable property in the name of another or to enter into a contract to purchase or sell taxable property in substitution of property acquired in accordance with subsection (2) of this section.

(4) Any person who is an eligible elector as of July 1, 2006, or who has been qualified as an eligible elector under this section shall remain qualified as an eligible elector until such time as such person ceases to meet the qualifications set forth in section 32-1-103 (5).

(5) Any person elected to a board whose qualification as an eligible elector is not challenged and overturned in accordance with the requirements specified in article 13.5 of title 1, C.R.S., shall not be subject to further challenge based upon qualification as a property owner under this section.

(6) (a) Notwithstanding any provision of law to the contrary:

(I) The qualification of any person appointed or elected to a board prior to April 21, 2016, is hereby validated, ratified, and confirmed and may not be challenged, except as provided in this subsection (6), unless a contest was initiated prior to April 21, 2016.

(II) The qualification of any person appointed or elected to a board on May 3, 2016, is hereby validated, ratified, and confirmed and may not be challenged, except as provided in this subsection (6), unless a contest was initiated within the time period specified in section 1-11-213 or 1-13.5-1403, C.R.S., as applicable.

(b) Except where a contest to the qualifications of a person to serve on a board has been timely initiated as described in this subsection (6), this subsection (6) validates, ratifies, and confirms the qualifications of any person appointed or elected to a board prior to May 3, 2016, notwithstanding any defects and irregularities in such qualifications. All actions undertaken by any board member who may not have been qualified to serve on the board when appointed or elected on or before May 3, 2016, shall be considered as actions of a de facto officer and director and as valid and effective.

(c) Nothing in this subsection (6) is intended to limit challenges by legal proceedings in the nature of quo warranto to the continuing service of persons appointed or elected to a board who may no longer be eligible to serve in accordance with section 32-1-905 together with challenges to the actions of such board taken after initiation of those legal proceedings.

Source: L. 2006: Entire section added, p. 135, § 1, effective March 29. **L. 2014:** (2)(a)(IV) amended, (HB 14-1164), ch. 2, p. 75, § 47, effective February 18. **L. 2016:** (5) amended and (6) added, (SB 16-211), ch. 174, p. 596, § 3, effective May 18; (1)(a) and (5) amended, (SB 16-189),

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ch. 210, p. 787, § 90, effective June 6.

Editor's note: Amendments to subsection (5) by SB 16-189 and SB 16-211 were harmonized.

Cross references: (1) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

(2) For the legislative declaration in SB 16-211, see section 1 of chapter 174, Session Laws of Colorado 2016.

32-1-809. Notice to electors.

(1) No more than sixty days prior to and not later than January 15 of each year, the board shall provide notice to the eligible electors of the special district in the manner set forth in subsection (2) of this section. The notice shall contain the following:

(a) The address and telephone number of the principal business office of the special district;

(b) The name and business telephone number of the manager or other primary contact person of the special district;

(c) The names of and contact information for the members of the board, the name of the board chair, and the name of each member whose office will be on the ballot at the next regular special district election;

(d) The times and places designated for regularly scheduled meetings of the board during the year and the place where notice of board meetings is posted pursuant to section 24-6-402 (2)(c), C.R.S.;

(e) The current mill levy of the special district and the total ad valorem tax revenue received by the district during the last year;

(f) The date of the next regular special district election at which members of the board will be elected;

(g) Information on the procedure and time for an eligible elector of the special district to submit a self-nomination form for election to the board pursuant to section 1-13.5-303, C.R.S.;

(h) Repealed.

(i) The address of any website on which the special district's election results will be posted; and

(j) Information on the procedure for an eligible elector to apply for a permanent absentee voter status as described in section 1-13.5-1003, C.R.S., with the special district.

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(2) The notice required by subsection (1) of this section shall be made in one or more of the following ways:

(a) Mailing the notice separately to each household where one or more eligible electors of the special district resides;

(b) Including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, voter information card or other notice of election, or other informational mailing sent by the special district to the eligible electors of the special district;

(c) Posting the information on the official website of the special district if there is a link to the district's website on the official website of the division;

(d) For any district that is a member of a statewide association of special districts formed pursuant to section 29-1-401, C.R.S., by mailing or electronically transmitting the notice to the statewide association of special districts, which association shall post the notice on a publicly accessible section of the association's website; or

(e) For a special district with less than one thousand eligible electors that is wholly located within a county with a population of less than thirty thousand, posting the notice in at least three public places within the limits of the special district and, in addition, posting a notice in the office of the county clerk and recorder of the county in which the special district is located. Such notices shall remain posted until the Tuesday succeeding the first Monday of the following May.

(3) A special district shall make a copy of the notice required by subsection (1) of this section available for public inspection at the principal business office of the special district.

(4) Special districts with overlapping boundaries may combine the notices mailed pursuant to paragraph (a) of subsection (2) of this section, so long as the information regarding each district is separately displayed and identified.

Source: L. 2009: Entire section added, (SB 09-087), ch. 325, p. 1733, § 5, effective September 1. **L. 2013:** (1)(h) repealed, (HB 13-1303), ch. 185, p. 752, § 138, effective May 10. **L. 2014:** (1)(g) amended and (1)(j) added, (HB 14-1164), ch. 2, p. 71, § 32, effective February 18. **L. 2015:** (1)(c) and (3) amended, (HB 15-1092), ch. 87, p. 251, § 5, effective August 5.

Cross references: (1) In 2013, subsection (1)(h) was repealed by the "Voter Access and Modernized Elections Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 185, Session Laws of Colorado 2013.

(2) For the legislative declaration in HB 14-1164, see section 1 of chapter 2, Session Laws of Colorado 2014.

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PART 9
DIRECTORS - ORGANIZATION OF BOARD

32-1-901. Oath or affirmation and bond of directors.

(1) Each director, within thirty days after his or her election or appointment to fill a vacancy, except for good cause shown, shall take an oath or affirmation in accordance with section 24-12-101, except as otherwise required by this section. When an election is canceled in whole or in part pursuant to section 1-13.5-513, each director who was declared elected shall take the oath or affirmation in accordance with section 24-12-101, except as otherwise required by this section, within thirty days after the date of the regular election, except for good cause shown. The oath shall be filed with the clerk of the court and with the division.

(2) At the time of filing said oath, each director shall file a bond at the expense of the special district, in an amount determined by the board of not less than one thousand dollars each, conditioned upon the faithful performance of his or her duties as director.

(3) If any director fails to take an oath or affirmation in accordance with section 24-12-101, except as otherwise required by this section, or furnish the requisite bond within the period allowed, except for good cause shown, his or her office shall be deemed vacant, and the vacancy thus created shall be filled in the same manner as other vacancies in the office of director.

Source: L. 81: Entire article R&RE, p. 1586, § 1, effective July 1. **L. 2001:** (1) amended, p. 1004, § 15, effective August 8. **L. 2016:** (1) amended, (SB 16-189), ch. 210, p. 788, § 91, effective June 6. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 699, § 31, effective August 8.

Editor's note: This section is similar to former § 32-1-846 as it existed prior to 1981.

Cross references: For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

32-1-902. Organization of board - compensation - disclosure.

(1) After taking oath and filing bonds, the board shall elect one of its members as chairman of the board and president of the special district, one of its members as a treasurer of the board and special district, and a secretary who may be a member of the board. The secretary and the treasurer may be one person, but, if such is the case, he or she shall be a member of the board. The board shall adopt a seal, and the secretary shall keep in a visual text format that may be transmitted electronically a record of all its proceedings, minutes of all meetings, certificates,

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contracts, bonds given by employees, and all corporate acts, which shall be open to inspection of all electors, as well as to all other interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the special district in permanent records. He shall file with the clerk of the court, at the expense of the special district, a corporate fidelity bond in an amount determined by the board of not less than five thousand dollars, conditioned on the faithful performance of the duties of his office.

(3) (a) (I) For directors serving a term of office commencing prior to January 1, 2018, each director may receive as compensation for the director's service a sum not in excess of one thousand six hundred dollars per annum, payable not to exceed one hundred dollars per meeting attended.

(II) For directors serving a term of office commencing on or after January 1, 2018, each director may receive as compensation for the director's service a sum not in excess of two thousand four hundred dollars per annum, payable not to exceed one hundred dollars per meeting attended.

(b) No director shall receive compensation as an employee of the special district, other than that provided in this section, and any director shall disqualify himself or herself from voting on any issue in which the director has a conflict of interest unless the director has disclosed such conflict of interest in compliance with section 18-8-308, C.R.S. Reimbursement of actual expenses for directors shall not be considered compensation. No director receiving workers' compensation benefits awarded in the line of duty as a volunteer firefighter or pension payments to retired firefighters shall be allowed to vote on issues involving the director's disability or pension payments.

(4) If a director of any special district owns undeveloped land which constitutes at least twenty percent of the territory included in the special district, such director shall disclose such fact in accordance with section 18-8-308, C.R.S., before each meeting of the board, and the fact of such disclosure shall be entered in the minutes of such meeting. For the purposes of this subsection (4), "undeveloped land" means real property which has not been subdivided or which has no improvements constructed on it, excluding real property dedicated for park, recreation, or open space purposes.

Source: L. 81: Entire article R&RE, p. 1586, § 1, effective July 1. **L. 84:** (3) amended, p. 845, § 1, effective July 1. **L. 90:** (3) amended, p. 572, § 64, effective July 1. **L. 91:** (4) added, p. 788, § 16, effective June 4. **L. 96:** (3) amended, p. 548, § 1, effective April 24. **L. 2005:** (3)(a) amended, p. 386, § 1, effective July 1. **L. 2009:** (1) amended, (HB 09-1118), ch. 130, p. 562, § 9, effective August 5. **L. 2017:** (3)(a) amended, (HB 17-1297), ch. 364, p. 1905, § 1, effective August 9.

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Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Law reviews. For article, "Director Conflicts: The Effect of Disclosure -- Parts I and II", see 17 Colo. Law. 461 and 639 (1988).

Subsection (3) in no way circumscribes the authority of the court to review the district's decision to determine whether the conflicts of interest resulted in "bad faith". If primary purpose of condemnation is to advance private interests, the existence of an incidental public benefit does not prevent a court from finding "bad faith" and invalidating a condemning authority's determination that a particular acquisition is necessary. Denver West Metro. Dist. v. Geudner, 786 P.2d 434 (Colo. App. 1989).

Applied in Berkeley Metro. Dist. v. Poland, 705 P.2d 1004 (Colo. App. 1985).

32-1-902.5. Increasing the number of board members.

(1) (a) A special district having a five-member board may increase the number of board members to seven by the adoption of a resolution by the board and the approval of the resolution as specified in subsection (1)(b) of this section. The board shall consider the resolution at a public meeting after publication of notice regarding the place, time, and date of the meeting and of the proposed increase in the number of board members. Public input must be allowed at the meeting.

(b) Upon adopting a resolution pursuant to subsection (1)(a) of this section, the board shall file a certified copy of the resolution with the board of county commissioners or governing body of the municipality that approved the service plan of the special district pursuant to section 32-1-204.5, 32-1-204.7, or 32-1-205. If, no later than forty-five days after the filing of the certified copy of the resolution, neither the board of county commissioners nor the governing body of the municipality has notified the board that it considers the plan to increase the number of board members to seven to be a material modification of the district's approved service plan, the board shall file the resolution with the clerk of the court, and the court shall enter an ex parte order establishing the number of the board members. The board shall record a certified copy of the order in the office of the county clerk and recorder in each county where the special district is organized and shall file a recorded certified copy of the order with the division.

(2) (a) If a special district increases the number of board members to seven as allowed in subsection (1) of this section, the additional directors shall serve as follows:

(I) One person is elected at the next regular special district election following the date of official recording of the certified copy of the order described in subsection (1)(b) of this section,

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or a special election called for the purpose of electing additional directors, to serve an original term expiring at the next regular special district election thereafter; and

(II) One person is elected at the next regular special district election following the date of official recording of the certified copy of the order described in subsection (1)(b) of this section, or a special election called for the purpose of electing additional directors, to serve an original term expiring at the second regular special district election thereafter.

(b) After the original terms set forth in subsection (2)(a) of this section, the additional directors shall serve four-year terms.

(3) If a special district increases to a seven-member board as allowed in this section, the special district is not allowed to reduce to a five-member board.

Source: L. 2017: Entire section added, (HB 17-1198), ch. 119, p. 419, § 1, effective August 9.

32-1-902.7. Director districts.

(1) The board may adopt a resolution to divide the district into director districts. A district with a five-member board may be divided into five director districts and a district with a seven-member board may be divided into seven director districts. Each director district must have, as nearly as possible, the same number of eligible electors and shall be as contiguous and compact as possible. In making the division, the board shall consider existing or potential developments within the proposed director districts that, when completed, would, in the reasonably near future, increase or decrease the number of eligible electors within the director district. The board shall then select from its members a representative of each director district, and if possible, the representative shall be an eligible elector from within a boundary of the director district they are selected to represent. Thereafter, directors must be eligible electors of the director district that they represent. If, after a reasonable time, the board determines that it is in the best interest of the district to revert to a single district format, the board may eliminate the director districts and thereafter operate as a single district by adopting a resolution.

(2) If a board divides a district into director districts pursuant to subsection (1) of this section, the board shall also designate whether the directors representing the director districts must be elected at large, or by the eligible electors within each director district. If, after a reasonable time, the board determines that it is in the best interest of the district, the board may reverse this designation by adopting a resolution.

Source: L. 2021: Entire section added, (SB 21-160), ch. 133, p. 542, § 14, effective September 7.

32-1-903. Meetings - definitions.

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(1) The board shall meet regularly at a time and in a location to be designated by the board. Special meetings may be held as often as the needs of the special district require, upon notice to each director. Special meetings include study sessions at which a quorum of the board is in attendance and notice of the meetings has been given in accordance with subsection (2) of this section or section 24-6-402 (2)(c), and at which information is presented but no official action can be taken by the board.

(1.5) All meetings of the board that are held solely at physical locations must be held at physical locations that are within the boundaries of the district or that are within the boundaries of any county in which the district is located, in whole or in part, or in any county so long as the physical location does not exceed twenty miles from the district boundaries. The provisions of this subsection (1.5) governing the physical location of meetings may be waived only if the following criteria are met:

(a) The proposed change of the physical location of a meeting of the board appears on the agenda of a meeting of the board; and

(b) A resolution is adopted by the board stating the reason for which meetings of the board are to be held in a physical location other than under the provisions of this subsection (1.5) and further stating the date, time, and physical location of such meeting.

(2) (a) Notice of time and location designated for all meetings is provided in accordance with section 24-6-402. Special meetings may be called by any director by informing the other directors of the date, time, and location of such special meeting, and the purpose for which it is called, and by providing notice in accordance with section 24-6-402. All official business of the board must be conducted only during meetings at which a quorum is in attendance at any location, and all said meetings shall be open to the public.

(b) The meeting notice of all meetings of the board that are held telephonically, electronically, or by other means not including physical presence must include the method or procedure, including the conference number or link, by which members of the public can attend the meeting.

(3) The notice posted pursuant to subsection (2) of this section for any regular or special meeting at which the board intends to make a final determination to issue or refund general obligation indebtedness, to consolidate the special district with another special district, to dissolve the special district, to file a plan for the adjustment of debt under federal bankruptcy law, or to enter into a private contract with a director, or not to make a scheduled bond payment, shall set forth such proposed action.

(4) The method of conducting any meeting held prior to July 7, 2021, by telephonic, electronic, or other virtual means is validated, ratified, confirmed, and may not be challenged.

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(5) As used in this part 9, unless the context otherwise requires:

(a) "Location" means the physical, telephonic, electronic, other virtual place, or combination of such means where a meeting can be attended.

(b) "Meeting" has the same meaning as set forth in section 24-6-402 (1)(b).

Source: L. 81: Entire article R&RE, p. 1587, § 1, effective July 1. **L. 90:** (1) amended, p. 1496, § 4, effective April 10. **L. 91:** (3) added, p. 789, § 17, effective June 4. **L. 2009:** (2) amended, (SB 09-087), ch. 325, p. 1735, § 6, effective September 1. **L. 2017:** IP(1) amended, (HB 17-1297), ch. 364, p. 1905, § 2, effective August 9. **L. 2019:** (2) amended, (HB 19-1087), ch. 134, p. 610, § 2, effective August 2. **L. 2021:** Entire section amended, (HB 21-1278), ch. 471, p. 3381, § 1, effective July 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

32-1-904. Office.

The office of the special district shall be at some fixed place to be determined by the board.

Source: L. 81: Entire article R&RE, p. 1587, § 1, effective July 1.

Editor's note: This section is similar to former § 32-4-207 (1) as it existed prior to 1981.

32-1-905. Vacancies.

(1) A director's office shall be deemed to be vacant upon the occurrence of any one of the following events prior to the expiration of the term of office:

(a) If for any reason a properly qualified person is not elected to a director's office by the electors as required at a regular election;

(b) If a person who was duly elected or appointed fails, neglects, or refuses to subscribe to an oath of office or to furnish the bond in accordance with the provisions of section 32-1-901;

(c) If a person who was duly elected or appointed submits a written resignation to the board;

(d) If the person who was duly elected or appointed ceases to be qualified for the office to which he was elected;

(e) If a person who was duly elected or appointed is convicted of a felony;

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(f) If a court of competent jurisdiction voids the election or appointment or removes the person duly elected or appointed for any cause whatsoever, but only after his right to appeal has been waived or otherwise exhausted;

(g) If the person who was duly elected or appointed fails to attend three consecutive regular meetings of the board without the board having entered upon its minutes an approval for an additional absence or absences; except that such additional absence or absences shall be excused for temporary mental or physical disability or illness;

(h) If the person who was duly elected or appointed dies during his term of office.

(2) (a) Any vacancy on the board shall be filled by appointment by the remaining director or directors, the appointee to serve until the next regular election, at which time, the vacancy shall be filled by election for any remaining unexpired portion of the term. If, within sixty days of the occurrence of any vacancy, the board fails, neglects, or refuses to appoint a director from the pool of any duly qualified, willing candidates, the board of county commissioners of the county which approved the organizational petition may appoint a director to fill such vacancy. The remaining director or directors shall not lose their authority to make an appointment to fill any vacancy unless and until the board of county commissioners which approved the organizational petition has actually made an appointment to fill that vacancy.

(b) No board of county commissioners shall make an appointment pursuant to paragraph (a) of this subsection (2) unless it provides thirty days' notice of its intention to make such appointment to the remaining members of the board and the vacancy remains open at the time the board of county commissioners makes its appointment. If the organizational petition was approved by more than one board of county commissioners, then the appointment shall be made by the boards of the county commissioners which approved the petition, sitting jointly. Such an appointment shall be made at an open public meeting.

(2.5) If there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the district, then the board of county commissioners of the county or counties which approved the organizational petition may appoint all directors from the pool of duly qualified, willing candidates. The board appointed pursuant to this subsection (2.5) shall call for nominations for a special election within six months after their appointment, which special election is to be held in accordance with section 32-1-305.5 and article 13.5 of title 1; except that the question of the organization shall not be presented at the election. In the event a district is wholly within the boundaries of a municipality, the governing body of the municipality may appoint directors.

(3) All appointments shall be evidenced by an appropriate entry in the minutes of the meeting, and the board shall cause a notice of appointment to be delivered to the person so appointed. A duplicate of each notice of appointment, together with the mailing address of the person so appointed, shall be forwarded to the division.

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Source: L. 81: Entire article R&RE, p. 1587, § 1, effective July 1. **L. 87:** (2.5) added, p. 1237, § 2, effective May 16. **L. 92:** (2) and (2.5) amended, p. 970, § 12, effective June 1; (2.5) amended, p. 885, § 123, effective January 1, 1993. **L. 2015:** (2.5) amended, (HB 15-1092), ch. 87, p. 252, § 6, effective August 5. **L. 2016:** (2.5) amended, (SB 16-189), ch. 210, p. 788, § 92, effective June 6. **L. 2021:** (2.5) amended, (SB 21-160), ch. 133, p. 542, § 15, effective September 7.

Editor's note: This section is similar to former § 32-1-849 as it existed prior to 1981.

32-1-906. Directors subject to recall - applicability of laws.

(1) Any director elected or appointed to the board of any special district who has actually held office for at least six months may be recalled from office by the eligible electors of the special district; except that a petition shall not be filed to recall a director whose office is up for election in less than six months from the date the petition is presented for filing. Except as provided in section 32-1-913, a petition signed by the lesser of three hundred eligible electors or forty percent of the eligible electors demanding the recall of any director named in the petition must be filed in accordance with section 32-1-910 to initiate a recall election.

(2) to (5) (Deleted by amendment, L. 92, p. 886, § 124, effective January 1, 1993.)

Source: L. 81: Entire article R&RE, p. 1588, § 1, effective July 1. **L. 88:** (5) added, p. 296, § 11, effective May 29. **L. 92:** Entire section amended, p. 886, § 124, effective January 1, 1993. **L. 2014:** (1) amended, (SB 14-158), ch. 170, p. 623, § 15, effective May 9. **L. 2016:** (1)(a) amended and (1)(b.5) added, (HB 16-1442), ch. 313, p. 1270, § 18, effective August 10. **L. 2018:** (1) amended, (HB 18-1268), ch. 200, p. 1297, § 1, effective May 4. **L. 2021:** (1) amended, (SB 21-250), ch. 282, p. 1672, § 80, effective June 21.

Editor's note: This section is similar to former § 32-1-847 as it existed prior to 1981.

Cross references: For the legislative declaration in SB 14-158, see section 1 of chapter 170, Session Laws of Colorado 2014.

ANNOTATION

Constitutionality of recall. There is no express or necessary implied constitutional prohibition contained in § 4 of art. XXI, Colo. Const., against including directors of special districts as elective officers who are subject to recall. Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983).

An official accepting petitions for recall of special district directors has a duty to evaluate the petitions for compliance with statutes, even if there is no protest. Adams v. Hill, 780 P.2d 55 (Colo. App. 1989).

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32-1-907. Recall election - resignation.

(1) If a director subject to a recall petition offers a resignation, it shall be accepted, and the vacancy caused by the resignation, or from any other cause, shall be filled as provided by section 32-1-905 (2).

(2) (Deleted by amendment, L. 92, p. 887, § 125, effective January 1, 1993.)

Source: L. 81: Entire article R&RE, p. 1589, § 1, effective July 1. **L. 92:** Entire section amended, p. 887, § 125, effective January 1, 1993. **L. 2014:** (1) amended, (SB 14-158), ch. 170, p. 623, § 16, effective May 9. **L. 2018:** (1) amended, (HB 18-1268), ch. 200, p. 1298, § 2, effective May 4.

Editor's note: This section is similar to former § 32-1-848 as it existed prior to 1981.

Cross references: For the legislative declaration in SB 14-158, see section 1 of chapter 170, Session Laws of Colorado 2014.

32-1-908. Recall procedures.

Procedures to recall a director of a special district are governed by this part 9.

Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1298, § 3, effective May 4.

32-1-909. Recall petition - designated election official - approval as to form - definition.

(1) A recall petition shall not be circulated until it has been approved as meeting the requirements of this section as to form.

(2) A request to appoint a designated election official for a recall of a special district director must be filed with the court as defined in section 32-1-103 (2) for the special district. Within five business days of receipt of a request to appoint a designated election official of a recall petition for a special district director, the court shall issue an order appointing a designated election official who shall perform the duties set forth for the recall. The designated election official shall not be the director sought to be recalled by the petition or the spouse or civil union partner of the director sought to be recalled by the petition. If the court appoints a county clerk and recorder as the designated election official, then, notwithstanding any contrary provision in this code, the recall must be conducted in accordance with article 12 of title 1; except that sections 32-1-906, 32-1-907, 32-1-909 (4) to (6), 32-1-910 (2)(c), 32-1-911 (3)(b), (3)(c), and (4), and 32-1-912 still apply regardless of who is appointed the designated election official.

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(3) The designated election official shall approve or disapprove a petition as to form by the close of the third business day following his or her appointment as the designated election official. On the day that the petition is approved or disapproved as to form, the designated election official shall mail or transmit electronically written notice of the approval or disapproval to the committee as defined in subsection (4)(a) of this section, the board of directors of the special district, and the director sought to be recalled. If the designated election official disapproves the petition as to form, the designated election official shall identify in the written notice the portion or portions of the petition that are not sufficient and the reasons they are not sufficient.

(4) Each petition must:

(a) Designate by name and address at least three, but not more than five, eligible electors of the special district, referred to in this part 9 as the "committee", who represent the signers thereof in all matters affecting the petition;

(b) Include the name of only one director to be recalled; and

(c) Contain a general statement, in not more than two hundred words, of the grounds on which the recall is sought, which statement is intended for the information of the electors of the special district. The statement must not include any profane or false statement. The electors of the special district are the sole and exclusive judges of the legality, reasonableness, and sufficiency of the grounds on which the recall is sought, and said grounds are not subject to a protest or to judicial review.

(5) The signatures to a recall petition need not all be on one sheet of paper. At the top of each signature page of the petition must be printed, in bold-faced type, the following:

Warning:

It is against the law:

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For anyone to sign this petition with any name other than one's own or to knowingly
sign one's own name more than once for the same measure or to sign such petition when
not an eligible elector.
Do not sign this petition unless you are an eligible elector. To be an eligible
elector, you must be registered to vote in Colorado and be either a resident of the
(name of special district), or be the owner or spouse or civil union partner of an
owner of taxable real or personal property in the (name of special district) as
described in section 32-1-103 (5) of the Colorado Revised Statutes.
Do not sign this petition unless you have read or have had read to you the proposed
measure in its entirety and understand its meaning.
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(6) Directly following the warning required by subsection (5) of this section must be printed in bold-faced type the following:

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Petition to recall (name of director sought to be recalled) from the office of
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director of the (name of special district).

Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1298, § 3, effective May 4. **L. 2021:** (2) amended, (SB 21-250), ch. 282, p. 1672, § 81, effective June 21.

32-1-910. Petition in sections - signing - affidavit - review - tampering with petition.

(1) A recall petition may be circulated and signed in sections, but each section must contain a full and accurate copy of the title and text of the petition as described in section 32-1-909 (4), and each signature page of each section must include the language set forth in section 32-1-909 (5) and (6).

(2) (a) All signed recall petitions must be filed with the designated election official within sixty days from the date on which the designated election official approves the petition as to form pursuant to section 32-1-909 (3).

(b) A recall petition shall be signed only by eligible electors of the special district using their own signatures, after which each such elector shall print or, if such elector is unable to do so, shall cause to be printed, such elector's legal name, the residence address of such elector, including the street and number, if any, and the date of signing of the petition.

(c) To each petition or petition section must be attached a signed, notarized, and dated affidavit of the person who circulated the petition stating the affiant's address, that the affiant is eighteen years of age or older, that the affiant circulated the petition, that the affiant made no misrepresentation of the purpose of such petition to any signer of the petition, that each signature on the petition was affixed in the affiant's presence, that each signature on the petition is the signature of the person whose name it purports to be, that to the best of the knowledge and belief of the affiant each person signing said petition was at the time of signing an eligible elector of the special district, and that the affiant neither has paid nor shall pay and that the affiant believes that no other person has so paid or shall pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to sign such petition.

(d) Any disassembly of a petition or petition section that separates the affidavit from the signatures renders the signatures on such petition or petition section invalid and of no force and effect.

(3) (a) Promptly after the petition has been filed, the designated election official shall review all petition information and verify the information against the county clerk and recorder's registration records and the county assessor's records to determine whether it meets the requirements of section 32-1-906 (1) and subsections (2)(a), (2)(b), and (2)(c) of this section.

(b) The designated election official shall issue a written determination that a recall petition is sufficient or not sufficient by the close of the fifth business day after such petition is filed, unless

a protest has been filed pursuant to subsection (3)(d) of this section prior to that date. On the day the designated official issues such written determination, he or she shall mail or transmit electronically a copy of the determination to the director sought to be recalled, the board of directors of the special district, and the committee as defined in section 32-1-909 (4)(a). The designated election official shall make a copy of the petition available to the director sought to be recalled.

(c) The designated election official shall deem the petition sufficient if he or she determines that it was timely filed, has the required attached circulator affidavits, and was signed by the requisite number of eligible electors of the special district within sixty days following the date upon which the designated election official approved the form of the petition. The designated election official shall not remove the signature of an eligible elector from the petition after such petition is filed. If the designated election official determines that a petition or petition section is not sufficient, the designated election official shall identify those portions of the petition that are not sufficient and the reasons for such determination in the written determination required in subsection (3)(b) of this section.

(d) (I) An eligible elector of the district may file a protest of a recall petition within fifteen days after such petition is filed. The protest must be in writing and signed under oath. The protest must be filed in the office of the designated election official and must set forth specifically the grounds of the protest. The grounds for a protest of a recall petition include, but are not limited to, the failure of any portion of a petition, petition section, circulator affidavit, or circulator to meet the requirements of this section or section 32-1-909.

(II) Upon receiving a protest of a recall petition, the designated election official shall promptly mail a copy of the protest, together with a notice fixing a time for hearing the protest on a date not less than five nor more than ten business days after such notice is mailed, to the director sought to be recalled, the committee as defined in section 32-1-909 (4)(a), and the board of directors of the special district.

(III) If the grounds of a protest include the failure of the petition to meet the signature requirements of section 32-1-906 (1) or subsection (2)(b) of this section, the designated election official shall provide the notice of the hearing to the county clerk and recorder and the county assessor of each county, any portion of the land area of which is located within the territorial boundaries of the special district. At least one business day before the hearing, the county clerk and recorder of each such county shall provide to the designated election official a registration list, as defined in section 1-13.5-103 (10), for the special district. At least one business day before the hearing, the county assessor of each such county shall provide to the designated election official a property owners list, as defined in section 1-13.5-103 (9), for the special district. The special district shall pay the costs of producing the registration lists and property owners lists. The designated election official shall use the lists prepared in accordance with this subsection (3)(d)(III) in determining whether the petition is sufficient.

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(IV) The designated election official shall serve as the hearing officer. All testimony in the hearing must be given under oath. The hearing officer has the power to issue subpoenas and compel the attendance of witnesses. The hearing must be summary and not subject to delay and must be concluded within forty days after the petition is filed. No later than five business days after the conclusion of the hearing, the hearing officer shall issue a written determination of whether the petition is sufficient or not sufficient. If the hearing officer determines that a petition is not sufficient, the hearing officer shall identify those portions of the petition that are not sufficient and the reasons for the insufficiency. The designated election official shall certify the result of the hearing to the committee as defined in section 32-1-909 (4)(a), the director sought to be recalled, and the board of directors of the special district.

(e) If the designated election official determines that a petition is not sufficient, a majority of the committee as defined in section 32-1-909 (4)(a) may withdraw the petition and amend it and refile it; except that a petition withdrawn and refiled in accordance with this subsection (3)(e) shall not be withdrawn and refiled again. The committee may amend the petition by adding any required information relating to the signers or by attaching proper circulator affidavits. To be considered, the amended petition must be refiled with the designated election official in the same manner as the original petition within fifteen days after the designated election official issues the determination that the petition is insufficient. The designated election official shall issue a written determination that an amended and refiled petition is sufficient or not sufficient within five business days after the petition is refiled. An eligible elector may file a protest of an amended and refiled petition. A protest of an amended and refiled petition is subject to the provisions of subsection (3)(d) of this section; except that the protest must be filed within five business days of the date on which the amended petition was refiled.

(f) A determination that a recall petition is sufficient or not sufficient is subject to review by the court as defined in section 32-1-103 (2) upon the written request of the director sought to be recalled, the director's representative, or a majority of the committee as defined in section 32-1-909 (4)(a); except that the statement of the grounds on which the recall is sought provided pursuant to section 32-1-909 (4)(c) is not subject to such review. A request for judicial review must be filed within five business days after the designated election official issues the determination.

(4) (a) (I) When a recall petition is determined sufficient, the designated election official shall submit the petition, together with a certificate of its sufficiency, to the board of directors of the special district at a regular or special meeting of such board.

(II) If no request for judicial review is filed, the board shall hold the regular or special meeting within thirty days following the expiration of the period within which a protest may be filed, or within thirty days of the date the written determination of sufficiency is issued, whichever is later. If a request for judicial review is filed, the board shall hold the regular or special meeting within thirty days following the issuance of a final order finding the petition

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sufficient.

(III) At the meeting, the board shall order and fix a date for the recall election to be held not less than seventy-five days nor more than ninety days from the date of the meeting. The board shall determine whether voting in the recall election is to take place at the polling place or by mail ballot.

(b) Notwithstanding subsection (4)(a)(III) of this section, if a regular special district election is to be held within one hundred eighty days after the date the board orders the recall election, the recall election must be held as part of such regular special district election; except that:

(I) If the director sought to be recalled is seeking reelection at the regular special district election, only the question of such director's reelection appears on the ballot.

(II) If a successor to the director sought to be recalled is to be selected at the regular special district election and the director sought to be recalled is not seeking reelection, only the question of the selection of the successor to the director appears on the ballot.

(5) A recall election shall be conducted and the result of such election declared in accordance with article 13.5 of title 1, unless such recall election is conducted as part of a coordinated election as provided in subsection (6) of this section.

(6) A recall election may be conducted as part of a coordinated election only if:

(a) The content of the recall election ballot is finally determined by the date for certification of the ballot content for the coordinated election under section 1-5-203 (3); and

(b) The county clerk and recorder agrees to conduct the recall election as part of the coordinated election.

(7) A person commits a class 2 misdemeanor if such person willfully:

(a) Destroys, defaces, mutilates, or suppresses a recall petition or petition section;

(b) Fails to file or delays the delivery of a recall petition or petition section;

(c) Conceals or removes a recall petition or petition section from the possession of a person authorized by law to have the custody thereof; or

(d) Aides, counsels, procures, or assists another person in doing any of said acts.

Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1299, § 3, effective May 4. **L. 2021:** IP(7) amended, (SB 21-271), ch. 462, p. 3257, § 544, effective March 1, 2022.

32-1-911. Resignation - vacancy filled - election - ballot - nomination.

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(1) If the director sought to be recalled resigns by submitting a written letter of resignation to the designated election official at any time prior to the recall election, all recall proceedings must be terminated, and the vacancy caused by such resignation must be filled as provided by section 32-1-905 (2)(a). If the director resigns after the ballots have been prepared or at a time when it would otherwise be impracticable to remove the recall question from the ballot, votes cast on the recall question shall not be counted. If there are no other issues to be voted on at such election, the recall election must be canceled and notice provided as set forth in section 1-13.5-513 (6).

(2) Unless the designated election official receives a resignation from the director sought to be recalled in accordance with subsection (1) of this section, the designated election official shall give notice of the election and the recall question substantially in compliance with section 1-13.5-502 at least twenty days before the election.

(3) (a) The official ballot for a recall election must include the statement of the grounds on which the recall is sought, as included in the recall petition in accordance with section 32-1-909 (4)(c). The director sought to be recalled may submit to the designated election official on or before the date on which the ballot content must be certified under section 1-13.5-511 or 1-5-203 (3), as applicable, a statement of not more than three hundred words in support of the director's retention. The director shall not include any profane or false statement in the statement in support of his or her retention. The official ballot must include the director's statement if the statement is submitted on or before the date of the certification of the ballot.

(b) The official ballot must include, for every director whose recall is to be voted on, the words: "Shall (name of director sought to be recalled) be recalled from the office of director of (name of special district)?". Following or to the right of the question must be the words "Yes" and "No" with a blank space or box to the right of each in which the eligible elector may indicate his or her vote for or against such recall.

(c) Following each recall question as described in subsection (3)(b) of this section, the official ballot must include the names of those persons who have been nominated as candidates in accordance with subsection (4) of this section to succeed the director sought to be recalled. The name of the director sought to be recalled must not appear on the ballot as a candidate for the office. The position of candidate names on the ballot shall be determined by lot in accordance with section 1-13.5-902 (2).

(4) Candidates to succeed the director sought to be recalled at a recall election must be nominated in accordance with section 1-13.5-303 or section 1-13.5-305. Self nominations must be filed no later than sixty-four days prior to the recall election. Affidavits of intent to be a write-in candidate must be filed no later than sixty-one days prior to the recall election. If the election is being conducted by a county clerk and recorder, self-nomination and affidavit of intent forms must be filed in accordance with the successor candidate deadlines as stated in article 12 of title 1. The designated election official may provide a call for nominations in

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accordance with section 1-13.5-501 (1).

(5) The designated election official shall make absentee ballots available no later than three business days after the board fixes the date for the recall election. An application for an absentee ballot must be filed with the designated election official no later than the Tuesday immediately preceding the recall election.

(6) If a majority of those voting on the question of the recall of a director vote "No", the director shall continue in office. If a majority vote "Yes", the director shall be removed from office upon compliance with section 32-1-901 by his or her successor.

(7) If the vote in a recall election recalls the incumbent director, the candidate who has received the highest number of votes for the vacated office shall be declared elected to serve the remainder of the term of office. The canvassing board or the designated election official shall promptly issue a certificate of election to the director-elect. If the person who received the highest number of votes fails to comply with section 32-1-901 within thirty days after the issuance of a certificate of election, or in the event no person sought election, the office is deemed vacant and must be filled in accordance with section 32-1-905 (2)(a).

(8) Mandatory or optional recounts of ballots in a recall election must be conducted in accordance with section 1-13.5-1306.

Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1304, § 3, effective May 4. **L. 2021:** (4) amended, (SB 21-250), ch. 282, p. 1672, § 82, effective June 21.

32-1-912. Incumbent not recalled - reimbursement - definition.

(1) If at any recall election the director whose recall is sought is not recalled, or if the hearing officer determines that a recall petition is not sufficient after a protest, the special district may reimburse the director sought to be recalled for his or her actual reasonable expenses.

(2) A director sought to be recalled who requests reimbursement shall file a written request for reimbursement with the board of the special district. The request must include the date, amount, proof of payment, and purpose for each expense for which the director is requesting reimbursement. The board shall review the request and determine whether the expenses are reasonable expenses under subsection (3) of this section and whether to reimburse such expenses. If the special district determines to reimburse the submitted expenses, the special district shall issue payment within forty-five days of the receipt of the request.

(3) (a) For purposes of this section, "reasonable expenses" include, but are not limited to, money spent challenging the sufficiency of the recall petition and in presenting to the eligible electors the official position of the director sought to be recalled, including campaign literature.

(b) "Reasonable expenses" do not include:

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(I) Money spent on challenges and court actions that are frivolous or are not related to the sufficiency of the recall petition;

(II) Personal expenses for meals, lodging, and travel costs for the director sought to be recalled;

(III) The costs of maintaining a campaign staff;

(IV) Reimbursement for expenses incurred by a campaign committee that has solicited contributions;

(V) Reimbursement of any kind for employees in the director's office; and

(VI) All expenses incurred prior to the filing of the recall petition.

Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1305, § 3, effective May 4.

32-1-913. Second recall petition.

After one recall petition and election, no further petition shall be filed against the same director during the term for which the director was elected unless such a petition is signed by more than fifty percent of the eligible electors of the district.

Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1306, § 3, effective May 4.

32-1-914. Powers of designated election official and county clerk and recorder.

(1) The designated election official shall render all interpretations and shall make all initial decisions as to controversies or other matters arising out of the operation of a recall election.

(2) All powers and authority granted to the designated election official by this article 1 may be exercised by the county clerk and recorder in the absence of the designated election official or in the event the designated election official for any reason is unable to perform the duties of the designated election official.

Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1306, § 3, effective May 4.

32-1-915. Costs of recall.

The special district shall promptly pay the costs of the recall election, including the reasonable costs of the county clerk and recorder and designated election official, including but not limited to the costs of staff time, consultants, printing, and publication.

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Source: L. 2018: Entire section added, (HB 18-1268), ch. 200, p. 1306, § 3, effective May 4.

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PART 10
GENERAL POWERS

32-1-1001. Common powers - definitions.

(1) For and on behalf of the special district the board has the following powers:

(a) To have perpetual existence;

(b) To have and use a corporate seal;

(c) To sue and be sued and to be a party to suits, actions, and proceedings;

(d) (I) To enter into contracts and agreements affecting the affairs of the special district except as otherwise provided in this part 10, including contracts with the United States and any of its agencies or instrumentalities. Except in cases in which a special district will receive aid from a governmental agency or purchase through the state purchasing program, a notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of sixty thousand dollars or more of public moneys. The special district may reject any and all bids, and, if it appears that the special district can perform the work or secure material for less than the lowest bid, it may proceed to do so.

(II) No contract for work or material including a contract for services, regardless of the amount, shall be entered into between the special district and a member of the board or between the special district and the owner of twenty-five percent or more of the territory within the special district unless a notice has been published for bids and such member or owner submits the lowest responsible and responsive bid.

(e) To borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures, and to issue bonds, including revenue bonds, in accordance with the provisions of part 11 of this article, and to invest any moneys of the special district in accordance with part 6 of article 75 of title 24, C.R.S.;

(f) To acquire, dispose of, and encumber real and personal property including, without limitation, rights and interests in property, leases, and easements necessary to the functions or the operation of the special district; except that the board shall not pay more than fair market value and reasonable settlement costs for any interest in real property and shall not pay for any interest in real property which must otherwise be dedicated for public use or the special district's use in accordance with any governmental ordinance, regulation, or law;

(g) To refund any bonded indebtedness as provided in part 13 of this article or article 54 or 56 of title 11, C.R.S.;

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(h) To have the management, control, and supervision of all the business and affairs of the special district as defined in this article and all construction, installation, operation, and maintenance of special district improvements;

(i) To appoint, hire, and retain agents, employees, engineers, and attorneys;

(j) (I) To fix and from time to time to increase or decrease fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the special district; except that fire protection districts may only fix fees and charges as provided in section 32-1-1002 (1)(e). The board may pledge such revenue for the payment of any indebtedness of the special district. Until paid, all such fees, rates, tolls, penalties, or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens.

(II) Notwithstanding any other provision to the contrary, the board may waive or amortize all or part of the tap fees and connection fees or extend the time period for paying all or part of such fees for property within the district in order to facilitate the construction, ownership, and operation of affordable housing on such property, as such affordable housing is defined by resolution adopted by the board. However, the board shall have the authority to condition such waiver, amortization, or extension upon the recordation against the property of a deed restriction, lien, or other lawful instrument requiring the payment of such fees in the event that the property's use as affordable housing is discontinued or no longer meets the definition of affordable housing as established by the board.

(k) To furnish services and facilities without the boundaries of the special district and to establish fees, rates, tolls, penalties, or charges for such services and facilities;

(l) To accept, on behalf of the special district, real or personal property for the use of the special district and to accept gifts and conveyances made to the special district upon such terms or conditions as the board may approve;

(m) To adopt, amend, and enforce bylaws and rules and regulations not in conflict with the constitution and laws of this state for carrying on the business, objects, and affairs of the board and of the special district;

(n) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to special districts by this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(o) To authorize the use of electronic records or signatures and adopt rules, standards, policies, and procedures for use of electronic records or signatures pursuant to article 71.3 of title 24, C.R.S.

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(2) (a) The governing body of any special district furnishing domestic water or sanitary sewer services directly to residents and property owners within or outside the district may fix or increase fees, rates, tolls, penalties, or charges for domestic water or sanitary sewer services only after consideration of the action at a public meeting held at least thirty days after providing notice stating that the action is being considered and stating the date, time, and place of the meeting at which the action is being considered. Notice must be provided to the customers receiving the domestic water or sanitary sewer services of the district in one or more of the following ways:

(I) Mailing the notice separately to each customer of the service on the billing rolls of the district;

(II) Including the notice as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, or other notice of action, or other informational mailing sent by the special district to the customers of the district;

(III) Posting the information on the official website of the special district if there is a link to the district's website on the official website of the division; or

(IV) For any district that is a member of a statewide association of special districts formed pursuant to section 29-1-401, C.R.S., by mailing or electronically transmitting the notice to the statewide association of special districts, which association shall post the notice on a publicly accessible section of the association's website.

(b) The power to fix or increase fees, rates, tolls, penalties, or charges for domestic water or sanitary sewer services is a legislative power of the district board and is not changed by the provisions of this section.

(c) No action to fix or increase fees, rates, tolls, penalties, or charges for domestic water or sanitary sewer services may be invalidated on the grounds that a person did not receive the notice required by this section if the district acted in good faith in providing the notice. Good faith is presumed if the district provided the notice in one or more of the ways listed in paragraph (a) of this subsection (2).

(3) The governing body of a special district may conduct or participate in forest health projects, as defined in section 37-95-103 (4.9), within and outside the district boundaries that benefit district property or improvements. The governing body of any special district that provides fire protection services may also conduct or participate in such forest health projects within and outside the district boundaries that reduce the risk of wildfire within the district. To secure and protect an adequate supply of water, the governing body of any special district that provides water services may also conduct or participate in such forest health projects within and outside the district boundaries that reduce the risk of wildfire within the watersheds within which the district collects, transports, or stores its water supply.

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Source: L. 81: Entire article R&RE, p. 1589, § 1, effective July 1. **L. 89:** (1)(e) amended, p. 1117, § 34, effective July 1. **L. 91:** (1)(d) and (1)(f) amended, p. 789, § 18, effective June 4. **L. 99:** (1)(o) added, p. 1348, § 8, effective July 1; (1)(j) amended, p. 555, § 1, effective August 4. **L. 2002:** (1)(o) amended, p. 858, § 9, effective May 30. **L. 2006:** (1)(d)(I) amended, p. 345, § 1, effective August 7. **L. 2013:** (2) added, (HB 13-1186), ch. 102, p. 323, § 1, effective August 7. **L. 2021:** (3) added, (HB 21-1008), ch. 159, p. 906, § 6, effective May 20.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For foreclosure of mechanics' liens, as provided in subsection (1)(j), see article 22 of title 38; for composition or adjustment of indebtedness, see part 14 of this article.

ANNOTATION

The statutory provision authorizing special districts to set their own fees for services is not an unconstitutional delegation of legislative authority. Statutory scheme, in conjunction with a special district's rules and regulations, is sufficient to prevent unnecessary and uncontrolled exercise of discretionary power by the special district. Krupp v. Breckenridge Sanitation Dist., 1 P.3d 178 (Colo. App. 1999).

A special district may assign its right to receive revenue from development fees to a private party. Such an assignment falls within a special district's statutory authority to dispose of property under subsection (1)(f). SDI, Inc. v. Pivotal Parker Commercial, LLC, 2014 CO 80, 339 P.3d 672.

Underlying purpose of this section is to protect property holders and taxpayers. The advantage to be derived by individual bidders is merely incidental. Intermountain Sys. v. Gore Valley/Big Horn Water Dists., 654 P.2d 872 (Colo. App. 1982).

If taxes have been improperly imposed against property owned by a park and recreation district, it is entitled to pursue a remedy therefor to the same extent as any other owner. S. Suburban Park & Recreation Dist. v. Bd. of Assessment Appeals, 894 P.2d 771 (Colo. App. 1994).

A special district has the power to enter into contracts and agreements affecting its affairs, however, if a contract is beyond the scope of the special district's constitutional or statutory powers, the contract is ultra vires and consequently void. Black v. First Fed. Sav. and Loan, 830 P.2d 1103 (Colo. App. 1992).

Liability for emergency services. A water and sanitation district can be held liable for additional services performed, valued at more than $5,000, although no competitive bids are obtained, when an emergency situation exists which demands immediate attention, and which threatens the public health and safety of a community. Martin Excavating, Inc. v. Tyrollean Terrace Water & San. Dist., 671 P.2d 1329 (Colo. 1983) (decided under former § 32-4-113).

Action to challenge propriety of award limited. This section creates a cause of action to challenge the propriety of an award only in taxpayers and property owners within the geographic limits of

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the contracting governmental body, and not in the unsuccessful bidder. Intermountain Sys. v. Gore Valley/Big Horn Water Dists., 654 P.2d 872 (Colo. App. 1982).

Lowest bidder cannot compel contract. The lowest bidder cannot compel the issue of a writ of mandamus to force the officers of a municipality to enter into a contract with him. Intermountain Sys. v. Gore Valley/Big Horn Water Dists., 654 P.2d 872 (Colo. App. 1982).

Special district, as a political subdivision of the state, possesses only those powers that are expressly conferred upon it by the constitution and by statute and such incidental implied powers as are reasonably necessary to carry out the express powers so conferred. Romer v. Fountain Sanitation Dist., 898 P.2d 37 (Colo. 1995).

Power to "sue and be sued" granted in subsection (1)(c) is not a grant of authority to file a civil action against the state for declaratory relief. Romer v. Fountain Sanitation Dist., 898 P.2d 37 (Colo. 1995).

This section authorizes a special district to collect tolls for the use of public roads which it is obligated to maintain. Wick v. Pueblo W. Metro. Dist., 789 P.2d 457 (Colo. App. 1989).

Although a special district has the power to enter into contracts, if the contract is beyond the scope of its constitutional or statutory powers, the contract is ultra vires and void. Black v. First Fed. Sav. & Loan, 830 P.2d 1103 (Colo. App. 1992).

Under this section, a special district may enter into a master lease. But, where the lease does not provide for cancellation by the special district during the term of the lease, the lease violates the constitutional prohibition against governmental debt by loan and is therefore ultra vires and void. Black v. First Fed. Sav. & Loan, 830 P.2d 1103 (Colo. App. 1992).

Where a special district was also a limited partner, it was entitled to contract with itself. However, where the master lease entered into by the special district amounted to an unconstitutional governmental debt by loan, the special district's master lease was ultra vires and void. Black v. First Fed. Sav. & Loan, 830 P.2d 1103 (Colo. App. 1992).

Special district has authority under subsection (1)(f) to regulate the use of and access to property it owns. A special district's authority to regulate use of its property and thereby exercise rights as a property owner is implied by the powers to acquire, own, and dispose of that property. Aspen Springs Metro. Dist. v. Keno, 2015 COA 97, 369 P.3d 716.

The broad, general powers set forth in this section are sufficient to constitute general authorization for a special district to file a chapter 9 petition in bankruptcy. In re Villages at Castle Rock Metro. Dist. No. 4, 145 B.R. 76 (Bankr. D. Colo. 1990).

Language in this section authorizing special districts to charge fees for services furnished by the district implicitly requires that those fees be reasonable in light of the services actually furnished by the district. Krupp v. Breckenridge Sanitation Dist., 1 P.3d 178 (Colo. App. 1999).

Statutory lien held by sanitation district that attached to debtors' real property pursuant to subsection (1)(j) survived debtors' bankruptcy proceedings. The question whether the district's lien was extinguished by the bankruptcy proceedings is governed by 11 U.S.C. § 1141 (c), which provides an exception to the general rule that liens pass through bankruptcy unaffected. Because the debtors' plan of reorganization made no provision for the district's lien, the lien was not extinguished pursuant to § 1141 (c) upon confirmation of the plan. 250 Gregory LLC v. Black Hawk/Central City Sanitation Dist., 77 P.3d 841 (Colo. App. 2003).

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Applied in Groditsky v. Pinckney, 661 P.2d 279 (Colo. 1983); Valley Hous. & Dev. Corp. v. Ridges Metro. Dist., 753 P.2d 801 (Colo. App. 1988).

32-1-1002. Fire protection districts - additional powers and duties.

(1) In addition to the powers specified in section 32-1-1001, the board of any fire protection district has the following powers for and on behalf of the district:

(a) To acquire, dispose of, or encumber fire stations, fire protection and fire fighting equipment, and any interest therein, including leases and easements;

(b) To have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the special district;

(c) To undertake and to operate as a part of the duties of the fire protection district an ambulance service, an emergency medical service, a rescue unit, and a diving and grappling service;

(d) To adopt and enforce fire codes, as the board deems necessary, but no such code shall apply within any municipality or the unincorporated portion of any county unless the governing body of the municipality or county, as the case may be, adopts a resolution stating that the code or specific portions thereof shall be applicable within the fire protection district's boundaries; except that nothing in this subsection (1)(d) shall be construed to affect any fire codes existing on June 30, 1981, that have been adopted by the governing body of a municipality or county. Notwithstanding any other provision of this section, no fire protection district shall prohibit the sale of permissible fireworks, as defined in section 24-33.5-2001 (11), within its jurisdiction.

(d.5) To receive and spend an impact fee or other similar development charge imposed pursuant to the provisions described in section 29-20-104.5, C.R.S.;

(e) To fix and from time to time increase or decrease fees and charges as follows, and the board may pledge such revenue for the payment of any indebtedness of the district:

(I) For ambulance or emergency medical services and extrication, rescue, or safety services provided in furtherance of ambulance or emergency medical services. "Extrication, rescue, or safety services" includes but is not limited to any:

(A) Services provided prior to the arrival of an ambulance;

(B) Rescue or extrication of trapped or injured parties at the scene of a motor vehicle accident; and

(C) Lane safety or blocking provided by district equipment.

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(II) For requested or mandated inspections if a fire code is in existence on June 30, 1981, as specified in paragraph (d) of this subsection (1) or has been adopted thereafter pursuant to said paragraph (d);

(III) For requested inspections if a fire code has been adopted by the board of the fire protection district, whether or not the code has been adopted by a municipality or county pursuant to paragraph (d) of this subsection (1);

(f) In areas of the special district where the county or municipality has rejected the adoption of a fire code submitted by the fire protection district, to compel the owners of premises, whenever necessary for the protection of public safety, to install fire escapes, fire installations, fireproofing, automatic or other fire alarm apparatus, fire extinguishing equipment, and other safety devices. This paragraph (f) shall not apply when a valid ordinance providing for fire safety standards, pursuant to section 30-15-401.5, C.R.S., is in effect.

(g) To create and maintain a paid firefighters' pension fund, under the provisions of parts 2 and 4 of article 30.5 of title 31, C.R.S., subject to the provisions of article 31 of said title, and a volunteer firefighter pension fund under part 11 of article 30 of title 31, C.R.S.;

(h) To establish, in its discretion, a system of civil service in the fire protection district to cover its paid employees who are directly employed by the fire protection district as full-time paid firefighters in accordance with the provisions of subsection (2) of this section.

(2) (a) A fire protection district's civil service system shall not cover employees of a fire department that renders fire protection service to the fire protection district under contract. The question of establishing a system of civil service shall be submitted at any regular special district election or special election of the fire protection district and shall not become effective unless approved as required for authorization of indebtedness. In establishing a system of civil service, the board may provide for the exclusion of supervisory and administrative personnel from the system. The board shall appropriate such funds as are necessary for the regular special district election or special election from the general funds of the fire protection district, and the election shall be held and conducted as provided in articles 1 to 13.5 of title 1, C.R.S.

(b) (I) (A) Except as provided in sub-subparagraph (B) of this subparagraph (I), the board of any fire protection district establishing a system of civil service for its paid employees may appoint three electors residing in the district to serve as a civil service committee, referred to in this subsection (2) as the "committee". Of those initially appointed, one member of the committee shall be appointed for a term of two years, one for four years, and one for six years; thereafter, each member shall be appointed for a term of six years.

(B) When two or more fire protection districts having established civil service systems consolidate into a single consolidated district pursuant to section 32-1-602, the civil service committee of each of the consolidating districts shall dissolve, and the board of directors of the

consolidated district shall appoint at least three but no more than nine members to serve on the civil service committee of the consolidated district. Of those initially appointed, three of the members of the civil service committee of the consolidated district shall serve staggered terms pursuant to sub-subparagraph (A) of this subparagraph (I), and the board shall appoint any other member for a term of six years. Thereafter, each member shall be appointed for a term of six years.

(C) Any member may be appointed to succeed himself or herself. No paid firefighter employed by the fire protection district may be a member of the committee. The members of the committee shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the discharge of their duties.

(D) The board of directors of any fire protection district consolidated prior to July 1, 1996, may expand, by appointment, the membership of its established civil service committee to no more than nine members pursuant to sub-subparagraph (B) of this subparagraph (I). The board shall appoint such members for a term of six years.

(II) The committee shall elect from among its members a president. The secretary of the board shall serve as the secretary of the committee but shall have no vote on the committee. The secretary shall keep a record of the minutes of all proceedings of the committee in a bound book separate and apart from the records of the board. The secretary is the only member of the board who may be a member of the committee.

(III) Any member of the committee may be discharged by the board for cause, but only after affording the member the right to a public hearing at which the member may be represented by counsel. Vacancies in office on the committee shall be filled according to the provisions of section 1-12-207, C.R.S.

(IV) The attorney for the board shall act as legal advisor to the committee, but at all hearings before the committee involving a firefighter, such firefighter may be represented by counsel.

(c) The committee shall:

(I) Establish standards for employment and termination of employment, including minimum conditions of employment for applicants for appointment and promotion, which shall assure that such applicants shall be of good moral character and physically, mentally, and emotionally capable of performing arduous duties, eighteen years of age or older, graduates of a high school or the equivalent thereof, citizens of the United States, and residents of the state of Colorado. In establishing standards concerning a person's character, the committee shall be governed by the provisions of section 24-5-101, C.R.S.

(II) Recruit applicants for employment; formulate and hold competitive examinations, or cause the same to be done, in order to determine the relative qualifications of persons seeking employment in any class or position as a firefighter; and formulate and hold promotional

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examinations for firefighters within the fire department of the fire protection district, or cause the same to be done;

(III) Certify to the board, as a result of such examinations, lists of qualified applicants for the various classes of positions who successfully completed such examinations;

(IV) Determine that any examination held pursuant to subparagraph (II) or (III) of this paragraph (c) is practical and consists only of subjects which will fairly determine the capacity of persons examined to perform duties of the position sought, including, but not limited to, tests of physical fitness and manual skill;

(V) When a vacant position is to be filled, certify to the board, upon written request of the board, the names of the three persons highest on the eligible list for that position or the applicable classification; but if less than three persons are on such list, then all the names shall be certified to the board. If there are no such lists, the committee shall authorize provisional or temporary appointment lists for such position or applicable classification.

(d) The committee, from time to time, may make, amend, and repeal bylaws and rules and regulations necessary to administer the provisions of this subsection (2).

(e) Disciplinary action against any firefighter may be instituted by the chief of the fire protection district, and a hearing thereon, after reasonable notice, shall be afforded to the firefighter concerned, at which hearing the firefighter may be represented by counsel of his or her choice at his or her expense. Such hearings shall be conducted in the same manner, insofar as possible, as provided in section 24-4-105, C.R.S. Any firefighter aggrieved by the decision of the board may obtain review thereof by appeal to the committee, and on such review the firefighter may be represented by counsel of his or her choice at his or her expense.

(f) The committee shall hear all complaints involving alleged injustice, wrongful discharge, and other violations of the rules and regulations of the committee and shall hear all appeals from decisions of the board on disciplinary actions pursuant to paragraph (e) of this subsection (2). All such hearings shall be conducted in the same manner, insofar as possible, as provided in section 24-4-105, C.R.S. The decision of the committee shall be final and shall not be set aside except by the committee or by a court of competent jurisdiction. Judicial review of any decision of the committee may be had in the same manner as prescribed in section 24-4-106, C.R.S.

(g) The board, if requested by the committee, may contract with any municipal or state agency for the purpose of conducting examinations for original appointment or for promotion, or for any other purpose in connection with the selection or administration of personnel.

(h) The firefighters of any fire protection district in good standing at the time of the establishment of said civil service system shall continue in their employment and rank, shall be automatically included in the civil service system, and shall be promoted or discharged in accordance with the provisions of the civil service rules and regulations; except that the office of

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fire chief shall be excluded from such civil service system. The board shall make provision for tenure of the fire chief, and the committee shall implement the same by appropriate rules and regulations.

(i) Any fire protection district which has established a system of civil service for its paid employees pursuant to this section shall not terminate the system unless the question of termination is submitted at an election. The election shall be conducted pursuant to articles 1 to 13.5 of title 1, C.R.S.

(j) The board shall appropriate annually, by resolution, to the committee sufficient funds to administer the provisions of this subsection (2).

(k) If any county assumes countywide responsibility for fire protection or any board of county commissioners becomes the board of a fire protection district and adopts a countywide merit, civil service, or career service system, any civil service system established under the provision of this subsection (2) shall be dissolved and merged with such countywide system, including all employees' benefits, rights, liabilities, and duties accrued or incurred under this subsection (2), and the same shall be continued following such merger.

(3) (a) The chief of the fire department in each fire protection district in the state of Colorado, by virtue of such office so held by him or her, shall have authority over the supervision of all fires within the district; except that responsibility for coordinating fire suppression efforts in case of any prairie, forest, or wildland fire that exceeds the capabilities of the district to control or extinguish shall be transferred to the county sheriff in accordance with section 30-10-513, C.R.S., subject to the duties and obligations imposed by this subsection (3) and subject to the provisions of the community wildfire protection plan prepared by the county in accordance with section 30-15-401.7, C.R.S. The chief shall be vested with such other express authority as is contained in this subsection (3), including commanding the fire department of such district.

(b) The chief of the fire department in each fire protection district shall:

(I) Enforce all laws of this state and ordinances and resolutions of the appropriate political subdivisions relating to the prevention of fires and the suppression of arson;

(II) (A) Inspect, or cause to be inspected by members or officers of his department, as often as he shall deem necessary, all buildings, premises, and public places, except the interior of any private dwelling, for the purpose of ascertaining and causing to be corrected any condition liable to cause fire or for the purpose of obtaining information relative to the violation of the various provisions of this subsection (3). Any individual conducting such inspection shall carry on his person properly authorized fire department identification which shall be shown, on request, to the owner, lessee, agent, or occupant of any structure prior to the inspection of the same.

(B) The chief of any such fire department or fire department members designated by the

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chief have the authority to enter into all structures and upon all premises within their respective jurisdictions at reasonable times during business hours or such times as such structures or premises are open for the purpose of examination in conformity with the duties imposed by this subsection (3), and it is unlawful for any person to interfere with the chief of any such fire department, or any member of such fire department designated by the chief to conduct an inspection, in the discharge of his duties or to hinder or prevent him from entering into or upon or from inspecting any buildings, establishments, enclosures, or premises in the discharge of his duties.

(III) Include, as part of the inspections required by subparagraph (II) of this paragraph (b), all of the following:

(A) An inspection of all buildings and enclosures to see that proper receptacles for ashes are provided, to cause all rubbish or other inflammable material to be properly removed or disposed of, and to make such suggestions and issue such orders to the owners or occupants of buildings as, in the opinion of such inspecting officer, will render the same safe from fire;

(B) An inspection of the surroundings of boilers and other heating apparatus in any building to ascertain whether all woodwork is properly protected and that no rubbish or combustible material is allowed to accumulate;

(C) An inspection of fire escapes and stairways to cause the removal of all obstructions therefrom and of all places where explosives or inflammable compounds are sold or stored;

(D) An inspection of the construction, placing, repair, and control of all fire escapes, standpipes, pressure tanks, fire doors, fire shutters, fire lines, fire hose, sprinkling systems, exit lights, and exit signs and a review of the installation and testing of fire equipment in all buildings and places requiring such equipment and of the provisions for means of escape or protection against loss of life and property from fire in such buildings and places;

(IV) Enforce, within his respective jurisdiction, all laws of this state and ordinances and resolutions of any appropriate political subdivision pertaining to the keeping, storage, use, manufacture, sale, handling, transportation, or other disposition of highly inflammable materials and rubbish, gunpowder, dynamite, crude petroleum or any of its products, explosive or inflammable liquids or compounds, tablets, torpedoes, or any explosives of a like nature, or any other explosive, including fireworks and firecrackers, and such chief may prescribe the materials and construction of receptacles to be used for the storage of any of said items; but authorization for enforcement of the provisions of this subsection (3) does not extend to the production, transportation, or storage of inflammable liquids as regulated by articles 20 and 20.5 of title 8 and title 34, C.R.S.;

(V) Investigate or cause to be investigated the cause, origin, and circumstance of every fire occurring within his jurisdiction by which property is destroyed or damaged and, so far as is possible, determine whether the fire was the result of carelessness or design. Such investigation

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shall begin immediately upon the occurrence of the fire, and if, after such investigation, the chief is of the opinion that the facts in relation to such fire indicate that a crime has been committed, he shall present the facts of such investigation and the testimony taken from any person involved, together with any other data in his possession, to the district attorney of the proper county, with his request that the district attorney institute such criminal proceedings as the investigation, testimony, or data may warrant. It is the duty of the district attorney upon such request to assist in such further investigation as may be required.

(c) Whenever any chief, or any designated member of a fire department, finds, through inspection procedures as outlined in subparagraph (II) or (III) of paragraph (b) of this subsection (3), any building or other structure which, for want of repair of or lack of or insufficient fire escapes, automatic or other fire alarm apparatus, or fire extinguishing equipment as may be required by law or for reasons of age, dilapidated condition, or any other cause, is especially liable to fire or is hazardous to the safety of the occupants thereof and which is so situated as to endanger other property, and whenever such officer finds in any building combustible or explosive matter or inflammable conditions, dangerous to the safety of such building or its occupants, the chief shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner, lessee, agent, or occupant of such premises or buildings. Any such owner, lessee, agent, or occupant who feels himself aggrieved by any such order may file, within five days after the making of any such order, a petition with the district court of the county in which such premises or building is located, requesting a review of such order, and it is the duty of such court to hear the same at the first convenient day and to make such order in the premises as justice may require, and such decision shall be final.

(d) Any owner, lessee, agent, or occupant of any building or premises maintaining any condition likely to cause fire or to constitute an additional fire hazard or any condition which impedes or prevents the egress of persons from such building or premises in violation of the provisions of this subsection (3) shall be deemed to be maintaining a fire hazard. Any person who violates any provision of this subsection (3) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than two hundred fifty dollars. Each day in which such a violation occurs shall constitute a separate violation of this subsection (3).

(4) (a) Within any fire protection district organized under the provisions of this article, it is unlawful for any person:

(I) To willfully or maliciously give, make, or cause to be given or made a false alarm of fire, whether by the use of a fire alarm box, telephone call, or otherwise;

(II) To willfully or maliciously disconnect, cut, or sever any wire of the fire alarm telegraph or in any manner tamper with any part of such communication apparatus;

(III) To aid, abet, knowingly permit, or participate in the commission of any act prohibited

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by this paragraph (a).

(b) Any person who violates any provision of this subsection (4) commits a class 2 misdemeanor.

(c) The provisions of paragraphs (a) and (b) of this subsection (4) shall not limit the power of municipalities to enact ordinances covering the same or similar subject matter, but no person acquitted of, convicted of, or pleading guilty to a violation of a municipal ordinance shall be charged or tried in a state court for the same or a similar offense, and no person acquitted of, convicted of, or pleading guilty to a violation of paragraph (a) of this subsection (4) in a state court shall be charged or tried in a municipal court for the same or a similar offense.

(5) The district attorney in the judicial district in which the special district was organized shall prosecute any violation under subsection (3) or (4) of this section.

Source: L. 81: Entire article R&RE, p. 1591, § 1, effective July 1. **L. 85:** (1)(d) and (1)(f) amended, p. 1062, § 2, effective July 1. **L. 92:** (2)(a), (2)(b)(III), and (2)(i) amended, p. 887, § 126, effective January 1, 1993. **L. 95:** (1)(g) amended, p. 1386, § 19, effective June 5; (3)(b)(IV) amended, p. 420, § 10, effective July 1. **L. 96:** (2)(b)(I) amended, p. 247, § 1, effective April 8; (1)(d) amended, p. 283, § 3, effective April 11; (1)(g) amended, p. 943, § 9, effective May 23. **L. 97:** (1)(h), (2)(b)(IV), (2)(c)(II), (2)(e), and (2)(h) amended, p. 1027, § 59, effective August 6. **L. 2009:** (3)(a) amended, (SB 09-020), ch. 189, p. 830, § 6, effective April 30; (1)(e)(I) amended, (HB 09-1041), ch. 415, p. 2291, § 1, effective August 5; (3)(a) amended, (SB 09-001), ch. 30, p. 128, § 6, effective August 5. **L. 2010:** (1)(e)(I)(B) amended, (HB 10-1095), ch. 23, p. 96, § 1, effective August 11. **L. 2016:** (1)(d.5) added, (HB 16-1088), ch. 259, p. 1061, § 4, effective June 8; (2)(a) and (2)(i) amended, (SB 16-189), ch. 210, p. 788, § 93, effective June 6. **L. 2017:** IP(1) and (1)(d) amended, (SB 17-222), ch. 245, p. 1028, § 7, effective August 9. **L. 2021:** (4)(b) amended, (SB 21-271), ch. 462, p. 3257, § 545, effective March 1, 2022.

Editor's note: (1) The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Amendments to subsection (3)(a) by Senate Bill 09-001 and Senate Bill 09-020 were harmonized.

Cross references: (1) For provisions in title 34 concerning storage of flammable liquids as referred to in subsection (3)(b)(IV), see article 64 of said title concerning underground storage of natural gas.

(2) For the legislative declaration contained in the 1995 act amending subsection (1)(g), see section 1 of chapter 254, Session Laws of Colorado 1995.

(3) For the short title ("Public Safety Fairness Act") in HB 16-1088, see section 1 of chapter 259, Session Laws of Colorado 2016.

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ANNOTATION

Law reviews. For article, "Using Local Police Powers to Protect the Environment", see 24 Colo. Law. 1063 (1995). For article, "The Lawyer's Role in Fire Code Enforcement Actions", see 24 Colo. Law. 2201 (1995).

City may provide fire hydrants. Although a fire district may have the statutory authority to provide for fire hydrants and a supporting water system, the statute is permissive and the fire district is clearly not required to do so. The fact that the fire district has the power to provide for such a system does not prevent a city from providing a similar service as part of its water system. The city has the right, as an incident to the water system servicing the area, to install fire hydrants as part of this service. Dunford v. City of Thornton, 29 Colo. App. 349, 483 P.2d 977 (1971).

And judicial review is available. To the extent that an employee is protected in his employment by the rules and regulations of the fire protection district, he has "tenure" and can only be deprived thereof for cause, under procedures adopted by the district. The employee is entitled to judicial review of the full procedures resulting in his discharge, and the board of directors can be required to answer. Maulding v. Schmitt, 162 Colo. 337, 426 P.2d 183 (1967).

Therefore, a trial court errs in reaching the conclusion that the board of directors has a perfect right to discharge employees no matter what their reasons are. Maulding v. Schmitt, 162 Colo. 337, 426 P.2d 183 (1967).

Board of directors must follow its own procedures for discharging firemen. When the board of directors establishes procedures concerning the manner in which firemen employed by them are to be subjected to censure or discharge, the board can not discharge a fireman without following the procedures prescribed by the rules. Maulding v. Schmitt, 162 Colo. 337, 426 P.2d 183 (1967).

Local regulation of fireworks has not been preempted by 1991 changes to the fireworks regulation statutes. Starr Fireworks, Inc. v. West Adams County Fire Dept., 903 P.2d 1202 (Colo. App. 1995).

The authority of the director of the division of labor in § 8-1-107 (2)(d) to "enforce the provisions of §§ 22-32-124 and 23-71-122" relating to building inspections is not exclusive but may also be taken by a fire protection district absent the school district or junior college district's exercise of authority to contract with a qualified fire inspector. West Adams County Fire v. Adams County Sch. Dist. 12, 926 P.2d 172 (Colo. App. 1996).

32-1-1003. Health service districts - additional powers.

(1) In addition to the powers specified in section 32-1-1001, the board of any health service district has any or all of the following powers for and on behalf of such district:

(a) To establish, maintain, or operate, directly or indirectly through lease to or from other parties or other arrangement, public hospitals, convalescent centers, nursing care facilities, intermediate care facilities, emergency facilities, community clinics, or other facilities providing health and personal care services, including but not limited to facilities licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S., and to organize, own, operate, control, direct,

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manage, contract for, or furnish ambulance service in said district;

(b) To organize, own, operate, control, direct, manage, contract for, or furnish ambulance service;

(c) To draw warrants against health service district funds held by the county treasurer for the purposes set forth in paragraphs (a) and (b) of this subsection (1);

(d) To contract with or work cooperatively and in conjunction with a health assurance district or other existing health-care provider or service to provide health-care services to the residents of such district; and

(e) To seek approval from the eligible electors in the health service district to collect, retain, and spend all revenue generated by any tax approved by the eligible electors in excess of the limitation provided in section 20 of article X of the state constitution.

(2) The board of county commissioners of any county or the governing body of any municipality within the health service district may transfer any real and personal property, whether or not theretofore used by the county or municipality for hospital purposes, to any newly organized health service district if such real and personal property is located in the newly organized district.

(3) A hospital district established prior to July 1, 1996, may continue to use and operate under the name it is using on June 30, 1996, or it may rename itself as otherwise provided by law and in accordance with this section. Nothing in this section shall be construed to limit the powers under prior law of a hospital district established prior to July 1, 1996.

(4) Nothing in this section or section 32-1-103 (9) shall be construed to limit any or all of the common powers of a special district as set forth in 32-1-1001 as it applies to a hospital district that was established prior to July 1, 1996, or a health service district established on or after July 1, 1996.

(5) Any health service district that is created pursuant to this article shall have the power, upon approval by the eligible electors of the district, to levy and collect a uniform sales tax throughout the entire geographic area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S., excluding the sale of cigarettes, subject to the following provisions:

(a) For purposes of this subsection (5), "eligible elector" shall have the same meaning as set forth in section 32-19-102 (3).

(b) For purposes of complying with the provisions of section 32-1-301 (2)(d.1), the petition for organization shall set forth the estimated sales tax revenues for the health service district's first budget year if the district will seek approval from the eligible electors of the district to levy a sales tax in its first budget year.

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(c) Any sales tax authorized pursuant to this subsection (5) shall be levied and collected as provided in section 32-19-112.

Source: L. 81: Entire article R&RE, p. 1597, § 1, effective July 1. **L. 96:** Entire section amended, p. 471, § 3, effective July 1. **L. 2003:** (1)(a) amended, p. 715, § 59, effective July 1. **L. 2007:** (1)(a) amended and (1)(d), (1)(e), and (5) added, pp. 1191, 1192, §§ 11, 12, effective July 1. **L. 2009:** IP(5) amended, (HB 09-1342), ch. 354, p. 1847, § 4, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Hospital board authority. The hospital board has both the power and the authority to terminate a physician's hospital privileges. Leonard v. Bd. of Dirs., 673 P.2d 1019 (Colo. App. 1983).

32-1-1003.5. Health assurance districts - additional powers - legislative declaration - definitions.

(1) The general assembly hereby finds, determines, and declares that access to health-care services is an increasing problem in Colorado and that some Coloradans do not have access to a primary care provider. It is the intent of the general assembly to ease the strain on Coloradan's health-care needs by allowing a special district to be created to provide health-care services. It is the intention of the general assembly to review the success of such efforts as authorized by subsection (2) of this section to determine the effectiveness of the program.

(2) In addition to the powers specified in section 32-1-1001, the board of any health assurance district has any or all of the following powers for and on behalf of such district:

(a) To organize, operate, control, direct, manage, contract for, furnish, or provide, directly or indirectly, health-care services to residents of the health assurance district who are in need of such services;

(b) To draw warrants against health assurance district funds held by the county treasurer for the purposes set forth in paragraph (a) of this subsection (2);

(c) To contract with or work cooperatively and in conjunction with a health service district or other existing health-care provider or service to provide health-care services to the residents of such district; and

(d) To seek approval from the eligible electors in the health assurance district to collect,

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retain, and spend all revenue generated by any tax approved by the eligible electors in excess of the limitation provided in section 20 of article X of the state constitution.

(3) The board of county commissioners of any county or the governing body of any municipality within the health assurance district may transfer any real and personal property, whether or not theretofore used by the county or municipality for hospital purposes, to any newly organized health assurance district if such real and personal property is located in the newly organized district.

(4) (Deleted by amendment, L. 2007, p. 1192, § 13, effective July 1, 2007.)

(5) Any health assurance district that is created pursuant to this article shall have the power, upon approval by the eligible electors of the district, to levy and collect a uniform sales tax throughout the entire geographic area of the district upon every transaction or other incident with respect to which a sales tax is levied by the state pursuant to the provisions of article 26 of title 39, C.R.S., excluding the sale of cigarettes, subject to the following provisions:

(a) For purposes of this subsection (5), "eligible elector" shall have the same meaning as set forth in section 32-19-102 (3).

(b) For purposes of complying with the provisions of section 32-1-301 (2)(d.1), the petition for organization shall set forth the estimated sales tax revenues for the health assurance district's first budget year if the district will seek approval from the eligible electors of the district to levy a sales tax in its first budget year.

(c) Any sales tax authorized pursuant to this subsection (5) shall be levied and collected as provided in section 32-19-112.

Source: L. 2001: Entire section added, p. 1164, § 14, effective June 5. **L. 2007:** (1), (2)(a), and (4) amended and (2)(c), (2)(d), and (5) added, pp. 1192, 1193, §§ 13, 14, effective July 1. **L. 2009:** IP(5) amended, (HB 09-1342), ch. 354, p. 1847, § 5, effective July 1.

Cross references: For the legislative declaration contained in the 2001 act enacting this section, see section 1 of chapter 300, Session Laws of Colorado 2001.

32-1-1004. Metropolitan districts - additional powers and duties.

(1) In addition to the powers specified in section 32-1-1001, the board of any metropolitan district has the following powers for and on behalf of such district:

(a) To enter into contracts with public utilities, cooperative electric associations, and municipalities for the purpose of furnishing street lighting service;

(b) To erect and maintain, in providing safety protection services, traffic and safety controls

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and devices on streets and highways and at railroad crossings and to enter into agreements with the county or counties in which a metropolitan district is situate or with adjoining counties, the department of transportation, or railroad companies for the erection of such safety controls and devices and for the construction of underpasses or overpasses at railroad crossings;

(c) To finance line extension charges for new telephone construction for the purpose of furnishing telephone service exclusively in districts which have no property zoned or valued for assessment as residential;

(d) To finance payment of incremental directional drilling costs for oil and gas wells drilled within the greater Wattenberg area, as that term is defined in section 24-65.5-102, C.R.S.

(2) A metropolitan district shall provide two or more of the following services:

(a) Fire protection as specified in section 32-1-103 (7);

(b) Elimination and control of mosquitoes;

(c) Parks or recreational facilities or programs as specified in section 32-1-103 (14);

(d) Safety protection through traffic and safety controls and devices on streets and highways and at railroad crossings;

(e) Sanitation services as specified in section 32-1-103 (18);

(f) Street improvement through the construction and installation of curbs, gutters, culverts, and other drainage facilities and sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements;

(g) Establishment and maintenance of television relay and translator facilities;

(h) Transportation as specified in subsection (5) of this section;

(i) Water and sanitation services as specified in section 32-1-103 (18), (24), and (25);

(j) Water as specified in section 32-1-103 (25);

(k) Solid waste disposal facilities or collection and transportation of solid waste as specified in section 32-1-1006 (6) and (7).

(3) Any metropolitan district providing services specified in paragraph (a), (c), (e), (i), or (j) of subsection (2) of this section shall have all the duties, powers, and authority granted to a fire protection, park and recreation, sanitation, water and sanitation, or water district by this article, except as provided in subsection (4) of this section.

(4) A metropolitan district may have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by article 1 of title 38, may take any

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property necessary to the exercise of the powers granted, both within and without the special district, only for the purposes of fire protection, sanitation, street improvements, television relay and translator facilities, water, or water and sanitation, except for the acquisition of water rights, and, within the boundaries of the district, if the district is providing park and recreation services, only for the purpose of easements and rights-of-way for access to park and recreational facilities operated by the special district and only where no other access to such facilities exists or can be acquired by other means. A metropolitan district shall not exercise its power of dominant eminent domain within a municipality or the unincorporated area of a county, other than within the boundaries of the jurisdiction that approved its service plan, without a written resolution approving the exercise of dominant eminent domain by the governing body of the municipality in connection with property that is located within an incorporated area or by the board of county commissioners of the county in connection with property that is located within an unincorporated area.

(5) The board of a metropolitan district has the power to establish, maintain, and operate a system to transport the public by bus, rail, or any other means of conveyance, or any combination thereof, and may contract pursuant to part 2 of article 1 of title 29. The board of a metropolitan district may not establish, maintain, or operate such a system of transportation in a county, city, city and county, or any other political subdivision of the state empowered to provide a system of transportation except pursuant to a contract entered into pursuant to part 2 of article 1 of title 29. The board of a metropolitan district not originally organized as having the power granted in this subsection (5) may exercise its power upon compliance with part 2 of this article 1. Notwithstanding any other provision of this subsection (5), the board of a metropolitan district shall not exercise the power under this subsection (5) until approved by the district court in compliance with part 2 of this article 1 and unless authorized, at a regular special district election or a special election held and conducted pursuant to article 13.5 of title 1, by a majority of the eligible electors of the district voting on the question of whether the board should exercise such power. The board of a metropolitan district which exercises the power granted in this subsection (5) shall provide transportation services only in the county or counties within which the boundaries of the metropolitan district lie.

(6) Notwithstanding anything in this article or any other law to the contrary:

(a) A metropolitan district may be formed within any part of the area within the regional transportation district, as described in section 32-9-106.1, for the single service of financing a system to transport the public by bus, guideway, or any other means of conveyance, or any combination thereof.

(b) A district created pursuant to paragraph (a) of this subsection (6) may be formed wholly or partly within an existing special district which provides or is authorized to provide the service of mass transportation if the improvements or facilities to be financed by such a district do not duplicate or interfere with any other improvements or facilities already constructed or planned to be constructed within the limits of the existing special district.

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(c) The intergovernmental contract required by subsection (5) of this section shall not be required for such a district except where the county, city, or city and county or any other political subdivision of the state within which a system of transportation is to be financed is actually operating a system of transportation.

(d) Except as specifically modified by this subsection (6), all other provisions of this article shall apply to such a district.

(e) In accordance with section 32-1-307 (1), no tract of land of forty acres or more used primarily and zoned for agricultural uses shall be included in any metropolitan district providing parks or recreational facilities and programs that is organized under this article 1 without the written consent of the owners.

(7) The board of a metropolitan district has the power to furnish security services for any area within the special district. Such power may be exercised only after the district has provided written notification to, consulted with, and obtained the written consent of all local law enforcement agencies having jurisdiction within the area and any applicable master association or similar body having authority in its charter or declaration to furnish security services in the area. Any local law enforcement agency having jurisdiction within the area and any applicable master association or similar body having authority in its charter or declaration to furnish security services in the area may subsequently withdraw its consent after consultation with and providing written notice of the withdrawal to the board.

(8) (a) The board of a metropolitan district has the power to furnish covenant enforcement and design review services within the district if:

(I) The governing body of the applicable master association or similar body and the metropolitan district have entered into a contract to define the duties and responsibilities of each of the contracting parties, including the covenants that may be enforced by the district, and the covenant enforcement services of the district do not exceed the enforcement powers granted by the declaration, rules and regulations, or any similar document containing the covenants to be enforced; or

(II) The declaration, rules and regulations, or any similar document containing the covenants to be enforced for the area within the metropolitan district name the metropolitan district as the enforcement or design review entity.

(b) The board of a metropolitan district shall have the power to furnish covenant enforcement and design review services pursuant to this subsection (8) only if the revenues used to furnish such services are derived from the area in which the service is furnished.

(c) Nothing in this subsection (8) shall be construed to authorize a metropolitan district to enforce any covenant that has been determined to be unenforceable as a matter of law.

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(9) Except as limited by the service plan of the district, the board of a metropolitan district has the power to provide activities in support of business recruitment, management, and development within the district. A metropolitan district meeting the qualifications of this subsection (9) shall neither have nor exercise the power of eminent domain or dominant eminent domain for the purposes set forth in this subsection (9).

(10) (a) In addition to the excise tax imposed pursuant to article 28.8 of title 39, a metropolitan district with boundaries entirely within the unincorporated area of a county is authorized to levy, collect, and enforce a metropolitan district excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility. Such excise tax must be calculated based on the average market rate of the unprocessed retail marijuana. The tax shall be imposed at the time when the retail marijuana cultivation facility first sells or transfers unprocessed retail marijuana from the retail marijuana cultivation facility to a retail marijuana product manufacturing facility, a retail marijuana store, or another retail marijuana cultivation facility.

(b) If the boundaries of a metropolitan district are within a county that imposes an additional excise tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility pursuant to section 29-2-114, the excise tax rate imposed by the metropolitan district pursuant to this subsection (10) shall not exceed such tax rate imposed by the county. In no event shall the tax rate imposed pursuant to this subsection (10) exceed five percent of the average market rate, as determined by the department of revenue pursuant to section 39-28.8-101 (1), of the unprocessed retail marijuana.

(c) No excise tax shall be levied pursuant to the provisions of paragraph (a) of this subsection (10) until the proposal has been referred to and approved by the eligible electors of the metropolitan district. Any proposal for the levy of an excise tax in accordance with paragraph (a) of this subsection (10) may be submitted to the eligible electors of the district at a regular special district election, on the date of the state general election, or on the first Tuesday in November of an odd-numbered year, and any election on the proposal must be conducted in accordance with the "Uniform Election Code of 1992", articles 1 to 13 of title 1, C.R.S.

(d) Any retail marijuana excise tax imposed by a metropolitan district pursuant to this subsection (10) shall not be collected, administered, or enforced by the department of revenue, but shall instead be collected, administered, and enforced by the metropolitan district imposing the tax or through an intergovernmental agreement with the county in which the metropolitan district is located.

(11) A metropolitan district created on or after July 1, 2021, shall annually pay the state an amount equal to the total of all ad valorem credits claimed under section 39-29-105 (2)(b) for property taxes that are imposed by the metropolitan district. The state treasurer shall credit fifty percent of the payment to the state severance tax trust fund created by section 39-29-109, and

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fifty percent to the local government severance tax fund created by section 39-29-110, with these amounts further allocated in the same manner as the gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of article 27 of title 39.

Source: L. 81: Entire article R&RE, p. 1597, § 1, effective July 1. **L. 82:** (6) added, p. 501, § 7, effective April 15. **L. 87:** (1)(c) added, p. 1239, § 1, effective April 22. **L. 91:** (1)(b) amended, p. 1070, § 45, effective July 1. **L. 92:** (5) amended, p. 888, § 127, effective January 1, 1993. **L. 98:** (2)(k) added, p. 1070, § 2, effective June 1. **L. 2004:** (7) and (8) added, p. 1065, § 1, effective May 21. **L. 2007:** (6)(a) amended, p. 834, § 3, effective May 14; (1)(d) added, p. 2122, § 9, effective August 3; (9) added, p. 938, § 1, effective August 3. **L. 2008:** (1)(d) amended, p. 1082, § 3, effective August 5. **L. 2015:** (10) added, (HB 15-1367), ch. 271, p. 1080, § 19, effective June 4. **L. 2016:** (9) amended, (HB 16-1011), ch. 110, p. 314, § 1, effective April 15; (5) amended, (SB 16-189), ch. 210, p. 789, § 94, effective June 6. **L. 2017:** (6)(e) added, (HB 17-1065), ch. 73, p. 232, § 2, effective August 9; (10)(a) and (10)(b) amended, (SB 17-192), ch. 299, p.1641, § 6, effective August 9. **L. 2021:** (11) added, (SB 21-281), ch. 255, p. 1493, § 2, effective June 18; (4) amended, (SB 21-262), ch. 368, p. 2430, § 5, effective September 7; (5) amended, (SB 21-160), ch. 133, p. 543, § 16, effective September 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: (1) For the legislative declaration in HB 15-1367, see section 1 of chapter 271, Session Laws of Colorado 2015.

(2) For the legislative declaration in SB 21-281, see section 1 of chapter 255, Session Laws of Colorado 2021.

ANNOTATION

Because the purpose of the taking was essentially to benefit the public, the taking satisfied the public use requirement of the state constitution and statutes, even if, at the time of the taking, there was an incidental private benefit. The state constitution requires that condemnation benefit the public but it doesn't prohibit a private party from incidentally benefitting from any particular condemnation. When a condemnation's benefits are essentially public, there is no constitutional violation. Carousel Farms Metro. v. Woodcrest, 2019 CO 51, 442 P.3d 402.

32-1-1005. Park and recreation districts - additional powers - limitations.

(1) In addition to the powers specified in section 32-1-1001, the board of any park and recreation district has the following powers for and on behalf of such district:

(a) To operate a system of television relay and translator facilities and to use, acquire, equip,

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and maintain land, buildings, and other recreational facilities therefor;

(b) To use the power granted in section 32-1-1001 (1)(f) for the establishment of recreational facilities, including leases, easements, and other interests in land for the preservation or conservation of sites, scenes, open space, and vistas of recreational, scientific, historic, aesthetic, or other public interest. "Interests in land", as used in this paragraph (b), means any rights and interests in land less than the full fee interest, including but not limited to future interests, easements, covenants, and contractual rights. Every such interest in land, held pursuant to this paragraph (b), when recorded shall be deemed to run with the land to which it pertains for the benefit of the park and recreation district and may be protected and enforced by such district in any court of general jurisdiction by any proceeding known at law or in equity.

(c) To have and exercise the power of eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the special district, only for the purposes of television relay and translator facilities, and, within the boundaries of the district, only for the purpose of easements and rights-of-way for access to park and recreational facilities operated by the special district and only where no other access to such facilities exists or can be acquired by other means.

(2) (a) No district shall construct, own, or operate any bowling alley, roller skating rink, batting cage, golf course on which the game is played on an artificial surface, or an amusement park which has water recreation as its central theme, unless the board of such district receives approval for such project from the board of county commissioners of each county which has territory included in the district. The board of county commissioners shall disapprove the facility or service unless evidence satisfactory to the board of each of the following is presented:

(I) The facility or service is not adequately provided in the district by private providers;

(II) There is sufficient existing and projected need for the facility or service within the district;

(III) The existing facilities or services in the district are inadequate for present and projected needs;

(IV) The district has or will have the financial ability to discharge any proposed indebtedness on a reasonable basis; and

(V) The facility or service will be in the best interests of the district and of the residents of the district.

(b) In addition to any existing notice requirements, notice of the hearing of the board of county commissioners on the proposal of the district to construct, own, or operate a facility or to provide a service pursuant to this subsection (2) shall be sent by the district to all providers of the same or similar type of facility or service located within two miles of the proposed facility or

service no later than ten days prior to such hearing. The notice required by this paragraph (b) will be deemed to have been sent to all required providers if said notice has been sent by first-class mail, postage prepaid, to all such providers listed in a current classified telephone directory and to all such providers whose names are provided to the district by the appropriate trade association.

Source: L. 81: Entire article R&RE, p. 1599, § 1, effective July 1. **L. 89:** (2) added, p. 1313, § 2, effective April 18.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the legislative declaration contained in the 1989 act enacting subsection (2), see section 1 of chapter 287, Session Laws of Colorado 1989.

ANNOTATION

Special district has authority under subsection (1)(b) to regulate the use of and access to property it owns. Subsection (1)(b) incorporates the powers of a special district to regulate the use of its own property in § 32-1-1001 (1)(f). The power to regulate and restrict access to real property is necessary to, and implied from, the express powers of preservation and conservation of real property. A special district, like all other metropolitan districts providing parks or recreation services, may regulate the use of its real property in preserving or conserving open space. Aspen Springs Metro. Dist. v. Keno, 2015 COA 97, 369 P.3d 716.

32-1-1006. Sanitation, water and sanitation, or water districts - additional powers - special provisions.

(1) In addition to the powers specified in section 32-1-1001, the board of any sanitation, water and sanitation, or water district has the following powers for and on behalf of such district:

(a) (I) To compel the owner of premises located within the boundaries of any such district, whenever necessary for the protection of public health, to connect such owner's premises, in accordance with the state plumbing code, to the sewer, water and sewer, or water lines, as applicable, of such district within twenty days after written notice is sent by registered mail, if such sewer or water line is within four hundred feet of such premises. If such connection is not begun within twenty days, the board may thereafter connect the premises to the sewer, water and sewer, or water system, as applicable, of such district and shall have a perpetual lien on and against the premises for the cost of making the connection, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens.

(II) Nothing in subparagraph (I) of this paragraph (a) authorizes the board of any sanitation,

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water and sanitation, or water district to compel any connection with the sewer, water and sewer, or water lines, as applicable, of such district, by any owner of premises located outside of such district who utilizes private or nongovernmental persons, services, systems, or facilities including an on-site wastewater treatment system, for the provision of sewer, water and sewer, or water lines to such premises.

(b) (I) To divide such district into areas according to the water or sanitation services furnished or to be furnished therein. The board has the power to fix different rates, fees, tolls, or charges and different rates of levy for tax purposes against all of the taxable property within the several areas of such district according to the services and facilities furnished or to be furnished therein within a reasonable time. In addition, if the board finds it infeasible, impracticable, or undesirable for the good of the entire district to extend water or sewer lines and facilities to any part of such district, the board may designate by resolution such area not to be served with water or sanitation service, but such area designated not to be served shall be at least ten acres in extent.

(II) If the board divides a special district into areas according to the facilities and services furnished or to be furnished, to determine the amount of money necessary to be raised by taxation within each such area, taking into consideration other sources of revenue within the area, and to fix a levy which, when levied upon every dollar of the valuation for assessment of taxable property within such area of the special district, will supply funds for the payments of the costs of acquiring, operating, and maintaining the services or facilities furnished in such area and will pay promptly, when due, the principal or interest on bonds or other obligations issued and its pro rata share of the general operating expenses of the district.

(c) (I) To establish, construct, operate, and maintain works and facilities across or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are the property of the state of Colorado, and across any stream of water or watercourse. The board of county commissioners of any county in which any public streets or highways are situated which are to be cut into or excavated in the construction or maintenance of any such facilities has authority to adopt by resolution such rules as it deems necessary in regard to any such excavations and may require the payment of reasonable fees by such district as may be fixed by the board of county commissioners to insure proper restoration of such streets or highways.

(II) When such fee is paid, it is the responsibility of the board of county commissioners to promptly restore such street or highway to its former state. If the fee is not fixed and paid, such district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof.

(III) This grant of authority is not and shall not be construed as a limitation upon the existing powers of any municipality to regulate works and facilities in public streets or highways.

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(d) To assess reasonable penalties for delinquency in the payment of rates, fees, tolls, or charges or for any violations of the rules and regulations of the special district together with interest on delinquencies from any date due at not more than one percent per month or fraction thereof, and to shut off or discontinue water or sanitation service for such delinquencies and delinquencies in the payment of taxes or for any violation of the rules and regulations of the special district, and to provide for the connection with and the disconnection from the facilities of such district;

(e) To acquire water rights and construct and operate lines and facilities within and without the district;

(f) To have and exercise the power of eminent domain and dominant eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the special district, except for the acquisition of water rights;

(g) To fix and from time to time to increase or decrease tap fees. The board may pledge such revenue for the payment of any indebtedness of the special district.

(h) (I) To assess availability of service or facilities charges subject to the following provisions:

(A) No fee, rate, toll, or charge for connection to or use of services or facilities of such district shall be considered an availability of service or facilities charge.

(B) Any availability of service or facilities charges shall be made only when a notice, stating that such availability of service or facilities charges are being considered and stating the date, time, and place of the meeting at which they are to be considered, has been mailed by first-class United States mail, postage prepaid, to each taxpaying elector of such district at his last-known address, as disclosed by the tax records of the county or counties within which such district is located.

(C) Availability of service or facilities charges shall be assessed solely for the purpose of paying principal of and interest on any outstanding indebtedness or bonds of such district and shall not be used to pay any operation or maintenance expenses of, nor capital improvements within or for, such district.

(D) Availability of service or facilities charges shall be assessed only where water, sewer, or both water and sewer lines are installed and ready for connection within one hundred feet of any property line of the residential lot or residential lot equivalent to be assessed, but to one or both of which line or lines the particular lot or lot equivalent to be assessed is not connected.

(E) Availability of service or facilities charges shall be a percentage, not to exceed fifty percent, of the fees, rates, tolls, or charges for use of services or facilities of such district, said

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percentage to be determined by the board. If the fees, rates, tolls, or charges for the use of services or facilities vary dependent upon quantities of usage, the availability of service or facilities charges shall be a percentage, not to exceed fifty percent, of the average usage derived by dividing the total usage quantity for such district for the last preceding fiscal year by the total number of users in such district, said percentage to be determined by the board. In addition the aggregate amount of revenue budgeted and expected to be derived from availability of service or facilities charges shall not exceed the total amount of principal of and interest on the outstanding indebtedness or bonds of such district for such service currently budgeted for and to mature or accrue during the annual period within which such availability of service or facilities charges are payable, less the amount budgeted and expected to be produced during such period by the mill levy allocable to such service then being budgeted for and levied and assessed by such district.

(II) Notwithstanding the provisions of this paragraph (h), any metropolitan district providing water or sanitation or water and sanitation services which, prior to July 1, 1981, has imposed an availability of service charge pursuant to section 31-35-402 (1)(f), C.R.S., and has pledged such availability of service charges to the payment of outstanding bonds may continue such charge until such bonds are retired.

(1.5) (a) No water and sanitation district or water district shall furnish water service or water supply to any property located outside of the district's boundaries if such property is within the legal boundaries of another special district that has been organized with the power to furnish water facilities or water services, unless:

(I) In compliance with the provisions of this title and with the consent of the special district within whose boundaries such property is located, such property is included within the boundaries of the district seeking to provide water service or water supply; or

(II) After April 15, 1996, in lieu of inclusion pursuant to subparagraph (I) of this paragraph (a), the special district within whose boundaries such property is located gives consent to the provision of such water service or water supply.

(b) In the absence of such inclusion or consent, no water and sanitation district or water district shall have any right or power, however derived, to provide water service or water supply to any property outside of that district's boundaries and within the boundaries of another special district that has been organized with the power to furnish water facilities or water services.

(c) As used in this subsection (1.5), "water facilities" has the same meaning as in section 31-35-401 (7), C.R.S.

(2) (a) A special district organized for water or sanitation or for water and sanitation purposes, upon the filing of a resolution of the board with the court and after an election held pursuant to paragraph (b) of this subsection (2), may become a water and sanitation or metropolitan district, respectively, possessing all the rights, powers, and authority of such a district if there is not then pending a petition for the organization of a water and sanitation or

metropolitan district, partially or wholly within the water or sanitation or water and sanitation district, and if a metropolitan district does not already exist wholly or partly within the boundaries of the sanitation or water or water and sanitation district.

(b) (I) After a hearing on the resolution, the court shall direct that the question of conversion of the special district be submitted to the eligible electors of the special district and shall appoint the secretary as the designated election official responsible for the calling and conducting of the election according to article 13.5 of title 1.

(II) If a majority of the votes cast at the election are in favor of conversion and the court determines the election was held in accordance with article 13.5 of title 1, the court shall enter an order including any conditions so prescribed and converting the special district.

(3) Taxpaying electors of any area of five acres or more within or without a special district furnishing sanitation or water services or facilities or sanitation and water services or facilities or any area regardless of size immediately contiguous to such district may agree among themselves for the construction of water or sanitation facilities or water and sanitation facilities within such area, and the board of such district has the authority to enter into a contract with such taxpaying electors to allow any portion of revenue derived from water or sanitation charges and fees from such area or from special charges assessed against users of such sanitation or water facilities to be applied on the payment of the cost of the construction of such water or sanitation facilities. Such payment shall be made without interest and upon such terms as the parties may agree upon, but payment shall not extend over fifteen years. Such contracts shall not be included within the dollar limitation of debts provided by this article and shall not require approval of the electors of the special district.

(4) Any dispute involving a special district furnishing sanitation or water services or facilities or sanitation and water services or facilities and any customer of such district in which physical damage to the property of the customer in the amount of ten thousand dollars or less is alleged to have been caused by the actions of such special district may be submitted with the consent of the district and the customer to alternative dispute resolution procedures pursuant to the "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S., if such procedures are available in the judicial district where a complaint in such dispute would be filed. Notwithstanding any other provision of law to the contrary, once a party to such dispute has properly submitted the dispute to alternative dispute resolution procedures pursuant to this section, neither party shall remove the dispute from the alternative dispute resolution forum without the consent of the other party.

(5) The governing body of each special district providing water or sanitation services which implements an industrial wastewater pretreatment program pursuant to the federal act, as defined in section 25-8-103 (8), C.R.S., may seek such relief and impose such penalties as are required by such federal act and its implementing regulations for such programs.

(6) The board of a sanitation district or water and sanitation district may provide collection

and transportation of solid waste, including residential waste services as defined in section 30-15-401 (7.5)(d), for and on behalf of the district, including but not limited to the financing thereof, by either contracting with a third-party service provider pursuant to this section or providing such waste services pursuant to section 30-15-401 (7.5) and (7.7). The board may impose fees, rates, penalties, or charges for such service pursuant to section 32-1-1001 (1)(j)(I), and the board may require that the district residents use or pay user charges for residential waste services. If the board contracts with a third-party service provider, the board shall publish a notice for bids or a request for proposals no less than thirty days prior to awarding the contract. If the board decides to proceed with its own proposal to directly provide residential waste services rather than enter into a contract with a third-party service provider, the board shall request proposals to provide such services within a designated area of the district by publishing notice and awarding a contract in accordance with the procedures specified in section 30-15-401 (7.5)(c) and (7.7). The board shall not award a contract that exceeds three years in duration. The board may not provide collection and transportation of solid waste services within the boundaries of any municipality, city and county, or county that is providing solid waste services without the consent of the municipality, city and county, or county.

(7) The board of any sanitation district or water and sanitation district may provide solid waste disposal facilities, including but not limited to the financing thereof, for and on behalf of such district. Any service or facility pursuant to this subsection (7) shall be subject to part 1 of article 20 of title 30, C.R.S.

(8) (a) A water district or a water and sanitation district may provide park and recreation improvements and services in connection with a water reservoir owned by the district and adjacent land if such improvements and services are not already being provided by another entity with respect to the reservoir and adjacent land.

(b) Once the board of a water district or a water and sanitation district adopts a resolution to provide improvements and services pursuant to this subsection (8), no other entity may provide park and recreation improvements and services with respect to the reservoir and adjacent land without the consent of the board.

(c) The district may exercise any powers that a park and recreation district has in connection with the provision of park and recreation improvements and services, including imposing rates, fees, and charges in connection with the improvements and services. The district may use any district revenues to provide the improvements and services. The provision of improvements and services pursuant to this subsection (8) is not a material modification of the service plan of the district.

Source: L. 81: Entire article R&RE, p. 1599, § 1, effective July 1. **L. 83:** (1)(h)(I)(B) amended, p. 1279, § 1, effective May 25; (2) amended, p. 1280, § 1, effective May 26. **L. 89:** (4) added, p. 1315, § 1, effective March 15. **L. 90:** (5) added, p. 1346, § 8, effective July 1. **L. 92:** (2)(b) amended, p. 888, § 128, effective January 1, 1993. **L. 94:** (1)(a) amended, p. 593, § 1, effective

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April 7. **L. 96:** (1.5) added, p. 309, § 6, effective April 15. **L. 98:** (6) and (7) added, p. 1070, § 3, effective June 1. **L. 2005:** (8) added, p. 151, § 1, effective April 5. **L. 2012:** (1)(a)(II) amended, (HB 12-1126), ch. 137, p. 499, § 8, effective August 8. **L. 2016:** (2)(b) amended, (SB 16-189), ch. 210, p. 789, § 95, effective June 6. **L. 2020:** (6) amended, (HB 20-1074), ch. 48, p. 165, § 1, effective September 14. **L. 2021:** (2)(b) amended, (SB 21-160), ch. 133, p. 543, § 17, effective September 7.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For foreclosure of mechanics' liens, as provided in subsection (1)(a), see article 22 of title 38.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provision similar to this section.

This section contains no procedure for "reorganization", and in the absence of any legislatively created procedure for such, the court will not superimpose a judicially crafted "reorganization" procedure. Upper Bear Creek v. Bd. of County Comm'rs, 715 P.2d 799 (Colo. 1986).

Annexation by a city of a portion of territory owned by a quasi-municipal water district corporation does not deprive the district of its assets in the annexed territory, and does not prevent the district from continuing its service in the annexed territory. Valley Water Dist. v. City of Littleton, 32 Colo. App. 286, 512 P.2d 644 (1973).

Police power to protect citizens prevails over proprietary powers of district. As between the proprietary powers given to a district organized under former § 32-4-101 and the police power to protect its citizens and streets given to a city by § 31-15-702, the police power prevails. People v. Haase, 198 Colo. 47, 596 P.2d 392 (1979).

Street cut permit may be required by municipality. A municipality acting reasonably has the right to require a water and sanitation district, or those acting in its behalf, to obtain a permit to effect a street cut to repair the district's water lines located below the surface of the street. People v. Haase, 198 Colo. 47, 596 P.2d 392 (1979).

Contract between a water district to sell and deliver water to a city outside the district's boundaries in perpetuity was not null and void since the state grants the right to appropriators to the use of water in perpetuity. Cherokee Water Dist. v. Colo. Springs, 184 Colo. 161, 519 P.2d 339 (1974).

No authority to abrogate price portion of contract. Where a water district's contract involves a sale and delivery of water outside the boundaries of the district, the district does not have authority to abrogate the price portion of the contract. Cherokee Water Dist. v. Colo. Springs, 184 Colo. 161, 519 P.2d 339 (1974).

District acted within its statutory authority in classifying property for purposes of assessing standby fees in accordance to the type and extent of services to be furnished to the particular parcels of

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property. Valley Hous. and Development Corp. v. Ridges Metro. Dist., 753 P.2d 801 (Colo. App. 1988).

Tap fees are installation "charges" for making sewer services available to the real estate, and those "charges" constitute a perpetual lien against the property served. North Wash. Water & San. Dist. v. Majestic Sav. & Loan Ass'n, 42 Colo. App. 158, 594 P.2d 599 (1979).

District's lien given priority. When an improvement effected by the water and sanitation district advances the interest of the public health, safety and welfare and the public policy of this state, the district's lien must be given priority over the private lien of a private lender. Wasson v. Hogenson, 196 Colo. 183, 583 P.2d 914 (1978).

Priority over existing security interest not violative of due process. The creation of a perpetual lien for water and sewer tap fees and the priority given it does not violate the due process rights of those persons holding a security interest perfected before imposition of the lien. North Wash. Water & San. Dist. v. Majestic Sav. & Loan Ass'n, 42 Colo. App. 158, 594 P.2d 599 (1979).

Lien statement not necessary. A lien statement is necessary in order to perfect a mechanic's lien; however, where the charges are "in the nature of taxes", the lien is already perfected and a statement is not required. North Wash. Water & San. Dist. v. Majestic Sav. & Loan Ass'n, 42 Colo. App. 158, 594 P.2d 599 (1979); Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

District empowered to levy taxes without according proportional benefit. The district's board of directors has the power to levy general ad valorem taxes upon property within the district without according a benefit in proportion to the tax burden imposed. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

Taxation of property according to its value constitutional. The fact that property may be taxed according to its value regardless of whether the owners choose to participate in the proposed water system does not have any constitutional significance. Millis v. Bd. of County Comm'rs, 626 P.2d 652 (Colo. 1981).

Authorization of imposition of disparate tax levies upon real property in the same district in this statute does not violate the uniform taxation provision of § 3 of art. X of the state constitution. Senior Corp. v. Bd. of Assessment Appeals, 702 P.2d 732 (Colo. 1985) (decided under constitutional provision in effect prior to 1982 amendment).

Availability charges may be assessed against lots which have no road or sewer line access, provided that water line is installed and ready for connection within 100 feet of the properties, where owner of lots failed to overcome statutory presumption that benefit received by installation of lines equaled or exceeded assessment for sewer line. Crested Butte South Metro. Dist. v. Dyke, 768 P.2d 1248 (Colo. App. 1988).

District has the authority under this section to compel owners of certain premises to connect to the district's water and sewer lines whenever necessary for the protection of public health. Unless a governing body acts arbitrarily or capriciously, the determination that an ordinance is necessary for preservation of health and safety is binding upon a reviewing court. Risen v. Cucharas San. & Water Dist., 32 P.3d 596 (Colo. App. 2001).

Board may collect a tap fee, penalties, attorney fees, and interest in addition to the costs of making a forced connection. Risen v. Cucharas San. & Water Dist., 32 P.3d 596 (Colo. App. 2001).

A metropolitan district which imposed availability of service charges prior to July 1, 1981, to repay water and sewer bonds may continue to impose such charges to retire the outstanding

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indebtedness notwithstanding the requirement that such charges not exceed fifty percent of the charges for the use of the services of the district. Durango W. Metro. D. 1 v. HKS J. Venture, 793 P.2d 661 (Colo. App. 1990).

The term "dominant eminent domain", under § 32-9-103 (6), means that the power of eminent domain is superior to that of other specific governmental subdivisions of the state, but not the state itself. Absent a contrary definition in the special district provisions, the court assumed that the general assembly intended that the term in subsection (1)(f) has a similar meaning, and, therefore, town and water and sanitation district were not authorized to condemn state-owned property to determine feasibility of recreation and water storage project. Town of Parker v. Colo. Div. of Parks, 860 P.2d 584 (Colo. App. 1993).

A special district's lease purchase agreement cannot be considered indebtedness within the meaning of subsection (1)(h)(I)(C) when the lease specifies that it does not constitute a debt or indebtedness, and, therefore, it may not be used to assess and calculate availability of service or facility charges. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

This section and § 32-1-1603 should be read together because both are part of the act that sets forth a comprehensive regulatory scheme for special districts. By using the words "mill levy allocable to such service", subsection (1)(h)(I)(E) refers to the process described in § 32-1-1603 that requires that mill levies be certified to the board of county commissioners separately for the funding requirement of general obligation debt and for other budgetary requirements of the special district. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

Pursuant to subsection (1)(h)(I)(E), the indebtedness to be budgeted by a special district is the indebtedness due to accrue during the next year. Although the budget itself may later change, the calculation of availability of service or facility charges is to be based on the indebtedness then currently budgeted. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

The repeated time references in the statute are construed to mean that once the mill levy has been certified and allocated to debt service and a budget is in place for the indebtedness or bonds that will mature during the next year, the availability of service or facility charges budgeted at that time and expected to be derived shall not exceed the amount of that indebtedness or bonds, less the amount of the mill levy that has been allocated to debt service as certified pursuant to § 32-1-1603. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

This section indicates a legislative intent to limit the availability of service or facility charges to a precise annual statutory calculation, not to expand the charges beyond those encompassed by the plain language of the statute, and to provide only for such portions of a district's principal and interest payments on outstanding indebtedness or bonds that are not otherwise covered in the certified mill levy. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

The possibility that a district's budget may be amended during any given fiscal year pursuant to § 29-1-109 is immaterial to the assessment and calculation of a district's total availability of service or facility charge for the year at issue. Nothing in the language of this section suggests that the calculation may be revised when the budget changes or when other financial changes take place in the district. In addition, the total yearly calculation may not be recalculated based on an amended budget that is adopted later. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, 184 P.3d 106 (Colo. App. 2007).

32-1-1007. Ambulance districts - additional powers - special provisions.

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(1) In addition to the powers specified in section 32-1-1001, the board of any ambulance district, unless provided in section 32-1-1002 (1)(c) or 32-1-1003 (1)(b), has the following powers for and on behalf of such district:

(a) To own, maintain, and operate ambulances and other vehicles and equipment necessary for the provision of emergency medical services in said district;

(b) To provide emergency medical services by employees of the district, to provide a voluntary ambulance service, and to make contracts with individuals, partnerships, associations, or corporations or with other political subdivisions of the state or any combination thereof. For the purpose of this paragraph (b), "voluntary ambulance service" means an ambulance service which is operating not for pecuniary profit or financial gain and no part of the assets or income of which is distributable to, or enures to the benefit of, its members, directors, or officers.

(2) An ambulance district may be composed of only one county of the state or a portion thereof or two or more contiguous counties of the state or portions thereof, and the district shall consist of contiguous territory within such county or counties. No ambulance district shall be established in any area in which there is a fire protection district or a health service district that is providing an ambulance service or in any municipality that is providing an ambulance service.

Source: L. 83: Entire section added, p. 412, § 6, effective June 1. **L. 96:** (2) amended, p. 474, § 16, effective July 1.

32-1-1008. Tunnel districts - additional powers - special provisions.

(1) In addition to the powers specified in section 32-1-1001, the board of any tunnel district has the following powers for and on behalf of such district:

(a) To acquire, construct, improve, equip, operate, maintain, and finance one or more tunnel projects;

(b) To enter into contracts and agreements concerning the affairs of the tunnel district, including contracts with the United States, the state, any political subdivision of the state, any agency or instrumentality of any of the foregoing, and any private person, without taking bids therefor or otherwise awarding the same on a competitive basis, if in the opinion of the board, it is in the best interests of the tunnel district to so proceed;

(c) To exercise the power of eminent domain and, in the manner provided by article 1 of title 38, C.R.S., to take any property necessary to the exercise of the powers granted, both within and without the tunnel district, for the purposes of the acquisition, construction, improvement, equipping, operation, or maintenance, or any combination thereof, of one or more tunnels.

Source: L. 87: Entire section added, p. 1232, § 3, effective May 13.

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32-1-1009. Regional tourism projects.

(1) In addition to the powers specified in this part 10, and notwithstanding any limitation on the powers of a metropolitan district otherwise specified in this part 10 or in the metropolitan district's service plan, any metropolitan district designated as an approved financing entity pursuant to part 3 of article 46 of title 24, C.R.S., shall have all the powers necessary or convenient to carry out and effect its authority as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., including but not limited to the power to receive state sales tax increment revenue and to disburse and otherwise utilize such revenue for all lawful purposes pursuant to part 3 of article 4 of title 24, C.R.S. Such lawful purposes shall include but need not be limited to the financing of eligible costs and the design, construction, maintenance, and operation of eligible improvements as defined in section 24-46-303 (5), C.R.S., or otherwise incorporated into the Colorado economic development commission's conditions of approval pursuant to part 3 of article 46 of title 24, C.R.S.

(2) Notwithstanding any provision of section 32-1-207 or of the metropolitan district's service plan, authorization to receive state sales tax increment revenue pursuant to part 3 of article 46 of title 24, C.R.S., shall not be considered a material modification to the plan and corresponding changes to the plan may be made by the governing body to incorporate the use of state sales tax increment revenue of the metropolitan district without the requirement of petition to or approval by the board of county commissioners or the governing body of the municipality, as applicable.

(3) Any metropolitan district receiving state sales tax increment revenue, whether pursuant to designation as a financing entity pursuant to part 3 of article 46 of title 24, C.R.S., or pursuant to a contract entered into with any such entity, shall not use the state sales tax increment revenue to acquire property through the exercise of eminent domain.

Source: L. 2009: Entire section added, (SB 09-173), ch. 434, p. 2419, § 4, effective June 4.

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PART 11
FINANCIAL POWERS

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see section 20 of article X of the Colorado constitution.

32-1-1101. Common financial powers.

(1) For and on behalf of the special district, the board has the following powers:

(a) To levy and collect ad valorem taxes on and against all taxable property within the special district, which shall not be limited except as provided in section 39-10-111 (11) and in part 3 of article 1 of title 29. Any election on the question of an increased levy pursuant to section 29-1-302 shall be conducted as a special election in accordance with article 13.5 of title 1.

(b) To levy taxes and collect revenue, whenever any indebtedness has been incurred by a special district, for the purpose of creating one or more reserve funds in such amounts as the board may determine, which may be used to meet the obligations of the special district for bond interest repayment and for maintenance and operating charges and depreciation and to provide extensions of and replacements and improvements to the facilities and property of the special district;

(c) To issue negotiable coupon bonds of the special district. Bonds shall bear interest at a rate or rates such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually, and shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than twenty years from date. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity upon payment of a premium, not exceeding three percent of the principal thereof. Said bonds shall be executed in the name of and on behalf of the district and signed by the president with the seal of the district affixed thereto and attested by the secretary. Said bonds shall be in such denominations as the board shall determine, and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the president.

(d) To issue revenue bonds authorized by action of the board without the approval of the eligible electors of the special district. The revenue bonds shall be issued in the manner provided in part 4 of article 35 of title 31, C.R.S., for the issuance of revenue bonds by municipalities; except that the revenue bonds may be sold in one or more series at par or below or above par at public or private sale, in such manner and for such price as the board, in its discretion, shall determine. The revenue bonds and interest coupons, if any, appurtenant thereto shall never

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constitute the debt or indebtedness of the special district within the meaning of any provision or limitation of the laws of Colorado or the state constitution and shall not constitute nor give rise to a pecuniary liability of the special district or charge against its general credit or taxing powers. The revenue bonds and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes.

(e) In addition to any other means provided by law, to elect, by resolution, at a public meeting held after receipt of notice by the affected parties, including the property owner, to have certain delinquent fees, rates, tolls, penalties, charges, or assessments made or levied solely for water, sewer, or water and sewer services, certified to the treasurer of the county to be collected and paid over by the treasurer of the county in the same manner as taxes are authorized to be collected and paid over pursuant to section 39-10-107, C.R.S. The governing body of said special district shall pay to the county in which the affected property of the special district is located, at least once a year, an amount which shall be just and reasonable compensation for the extra labor imposed by this paragraph (e) and an amount for the special district's proportion of the expense of advertising the sale of lands for said delinquent fees, rates, tolls, penalties, charges, or assessments in each year, said amounts to be certified to the governing body of the special district by the county treasurer. Any such fee, rate, toll, penalty, charge, or assessment shall total at least one hundred fifty dollars per account and shall be at least six months delinquent. The treasurer of the county is also authorized to charge and retain a penalty at the rate of thirty percent, or thirty dollars, whichever is greater, on the delinquent sum due and owing to defray the costs of collection.

(f) (I) To divide the special district into one or more areas consistent with the services, programs, and facilities to be furnished therein. However, any facility operated by the special district within such area may be used by any resident of the special district for the same fee charged to persons residing within such area. Whenever the board divides the special district into one or more areas pursuant to this subparagraph (I), the board shall provide notification of such action to the board of county commissioners of each county that has territory included within the district and the governing body of any municipality that has adopted a resolution of approval of the district pursuant to section 32-1-204.5 or 32-1-204.7. Each board of county commissioners and municipal governing body that is entitled to such notification may elect, within thirty days after such notification, to treat the action as a material modification of the district service plan in accordance with section 32-1-207 (2).

(II) Any area created pursuant to this paragraph (f) shall be a subdistrict of the special district. The name of a subdistrict established on or after August 5, 2015, must include the name of the special district that established the subdistrict. A subdistrict shall be an independent quasi-municipal corporation, shall act pursuant to the provisions of this article, and shall possess all of the rights, privileges, and immunities of the special district. The subdistrict shall be subject to the service plan of the special district. The general assembly hereby finds and declares that any such division of the special district into one or more subdistricts shall provide for the fair

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and equitable taxation within the territorial limits of the authority levying the tax in conformity with the requirements of section 3 of article X of the state constitution.

(III) The board of the special district shall constitute ex officio the board of directors of the subdistrict. The presiding officer of the board shall be ex officio the presiding officer of the subdistrict, the secretary of the board shall be ex officio the secretary of the subdistrict, and the treasurer of the board shall be ex officio the treasurer of the subdistrict. For the purposes of complying with the requirements of subsection (6) of this section and article 59 of title 11, C.R.S., the debt of the subdistrict shall be treated separately from the debt of the special district and shall not be treated as debt of the special district. The total debt of the special district and all subdistricts shall not exceed any debt limits specified in the service plan of the special district.

(g) To establish special improvement districts within the boundaries of a special district and levy special assessments on property specially benefited by such improvements as specified in section 32-1-1101.7.

(1.5) (a) The board shall make any determination specified in paragraph (f) of subsection (1) of this section by resolution adopted at a regular or special meeting of the board after publication of notice of the purpose of the public meeting and the place, time, and date of such meeting.

(b) No resolution dividing the special district into one or more areas shall be adopted by the board pursuant to paragraph (a) of this subsection (1.5) if a petition objecting to such division is signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total valuation for assessment of all taxable real and personal property within the proposed area boundaries, and is filed with the special district no later than five days prior to the public meeting. However, the board may change the geographical boundaries of such area at the public meeting.

(c) Except as otherwise provided in this paragraph (c), no single parcel of land having a valuation for assessment constituting twenty-five percent or more of the total valuation of assessment of all real property within the boundaries of an area in a special district shall be included in such area without the written consent of the owner or owners of such real property. No single parcel of land owned by a corporate entity and having a valuation for assessment constituting five percent or more of the total valuation of assessment of all real property within the boundaries of an area in a special district shall be included in such area without the written consent of the owner of such real property. If, contrary to the provisions of this paragraph (c), such parcel of real property is included within the boundaries of such area, the owner or owners of such real property shall be entitled to petition the board to have such real property excluded from the area boundaries free and clear of any contract, obligation, debt, lien, or charge for which the owner or owners may otherwise be liable due to the inclusion of such real property in the area.

(d) If taxes are to be levied or debt is to be created within an area of the special district, the

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board shall submit a ballot issue approving such taxes or debt to the eligible electors within such area at a regular special district election or at a special election held on the Tuesday after the first Monday of November in an even-numbered year or the first Tuesday of November in an odd-numbered year conducted in accordance with the provisions of this article and section 20 of article X of the state constitution. In addition to any other matters, the ballot issue shall provide that the tax to be levied for services, programs, and facilities within such area is in addition to any other taxes imposed by the special district.

(e) Nothing in this subsection (1.5) or paragraph (f) of subsection (1) of this section shall repeal or affect any other law or any part thereof as it is the intent of the general assembly that this subsection (1.5) and paragraph (f) of subsection (1) of this section shall provide a separate but not an exclusive method of accomplishing the objectives of the general assembly.

(f) Nothing in this subsection (1.5) or in paragraph (f) of subsection (1) of this section shall impose any requirement contained in House Bill 02-1465, as enacted at the second regular session of the sixty-third general assembly, upon any area that was in existence prior to October 1, 2002; except that a district may, by resolution, elect to apply any of said requirements to such area.

(2) Whenever the board determines, by resolution, that the interest of the special district and the public interest or necessity demand the acquisition, construction, installation, or completion of any works or other improvements or facilities or the making of any contract with the United States or other persons or corporations to carry out the objects or purposes of such district, requiring the creation of a general obligation indebtedness exceeding one and one-half percent of the valuation for assessment of the taxable property in the special district, the board shall order the submission of the proposition of issuing general obligation bonds or creating other general obligation indebtedness, except the issuing of revenue bonds, at an election held for that purpose. The resolution shall also fix the date upon which the election will be held. The election shall be held and conducted as provided in article 13.5 of title 1. Any election may be held separately or may be held jointly or concurrently with any other election authorized by this article 1. If the issuance of general obligation bonds is approved at an election held pursuant to this subsection (2), the board shall be authorized to issue such bonds for a period not to exceed the later of five years following the date of the election or, subject to section 32-1-1101.5, for a period not to exceed twenty years following the date of the election if the issuance of such bonds is in material compliance with the financial plan set forth in the service plan, as that plan is amended from time to time, or in material compliance with the statement of purposes of the special district. After the specified period has expired, the board shall not be authorized to issue bonds which were authorized but not issued after the initial election unless the issuance is approved at a subsequent election; except that nothing in this subsection (2) shall be construed as limiting the board's power to issue refunding bonds in accordance with statutory requirements.

(3) (a) The declaration of public interest or necessity required and the provision for the holding of such an election may be included within the same resolution, which resolution, in

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addition to such declaration of public interest or necessity, shall recite:

(I) The objects and purposes for which the indebtedness is proposed to be incurred;

(II) The estimated cost of the works or improvements, as the case may be;

(III) How much, if any, of said estimated cost is to be defrayed out of any state or federal grant;

(IV) The amount of principal of the indebtedness to be incurred therefor; and

(V) The maximum net effective interest rate to be paid on such indebtedness.

(b) Whenever the board determines that the district should incur indebtedness in an amount which does not require approval by the eligible electors of the special district under subsection (2) of this section, the board shall establish the maximum net effective interest rate prior to the time the debt is incurred or contracted.

(4) If any proposition is approved at an election provided for in subsection (2) of this section, the board shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract, or issue and sell such bonds of the special district, as the case may be, all for the purposes and objects provided for in the proposition submitted and in the resolution therefor, in the amount so provided, at a price or prices and a rate or rates of interest such that the maximum net effective interest rate recited in such resolution is not exceeded. Except as provided in section 32-1-106 (2), submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose.

(5) Whenever any special district organized pursuant to this article has moneys on hand which are not then needed in the conduct of its affairs, the special district may deposit such moneys in any state bank, national bank, or state or federal savings and loan association in Colorado in accordance with state law. For the purpose of making such deposits, the board may appoint, by written resolution, one or more persons to act as custodians of the special district's moneys, and such persons shall give surety bonds in such amount and form and for such purposes as the board may require. Subject to the requirements of part 7 of article 75 of title 24, C.R.S., the special district's moneys may be pooled for investment with the moneys of other local government entities.

(6) (a) The total principal amount of general obligation debt of a special district issued pursuant to subsection (2) of this section, which debt is issued on or after July 1, 1991, shall not at the time of issuance exceed the greater of two million dollars or fifty percent of the valuation for assessment of the taxable property in the special district, as certified by the assessor, except for debt which is:

(I) Rated in one of the four highest investment grade rating categories by one or more

nationally recognized organizations which regularly rate such obligations;

(II) Determined by the board of any special district in which infrastructure is in place to be necessary to construct or otherwise provide additional improvements specifically ordered by a federal or state regulatory agency to bring the district into compliance with applicable federal or state laws or regulations for the protection of the public health or the environment if the proceeds raised as a result of such issue are limited solely to the direct and indirect costs of the construction or improvements mandated and are used solely for those purposes;

(III) Secured as to the payment of the principal and interest on the debt by a letter of credit, line of credit, or other credit enhancement, any of which must be irrevocable and unconditional, issued by a depository institution:

(A) With a net worth of not less than ten million dollars in excess of the obligation created by the issuance of the letter of credit, line of credit, or other credit enhancement;

(B) With the minimum regulatory capital as defined by the primary regulator of such depository institution to meet such obligation; and

(C) Where the obligation does not exceed ten percent of the total capital and surplus of the depository institution, as those terms are defined by the primary regulator of such depository institution; or

(IV) Issued to financial institutions or institutional investors.

(b) Nothing in this title shall prohibit a special district from issuing general obligation debt or other obligations which are either payable from a limited debt service mill levy, which mill levy shall not exceed fifty mills, or which are refundings or restructurings of outstanding obligations, or which are obligations issued pursuant to part 14 of this article.

Source: L. 81: Entire article R&RE, p. 1602, § 1, effective July 1. **L. 83:** (5) amended, p. 1010, § 4, effective March 29. **L. 86:** (1)(a)(II) repealed, p. 1069, § 2, effective March 26; (1)(a) amended, p. 1027, § 7, effective January 1, 1987. **L. 89:** (1)(e) added, p. 1316, § 1, effective April 23. **L. 91:** (2) amended and (6) added, p. 790, § 19, effective June 4. **L. 92:** (1)(a), (1)(d), (2), and (3)(b) amended, p. 889, § 129, effective January 1, 1993. **L. 94:** (2) amended, p. 1196, § 102, effective July 1. **L. 95:** (1)(a) amended, p. 128, § 1, effective April 7. **L. 2000:** (1)(f) and (1.5) added, pp. 456, 457, §§ 1, 2, effective August 2. **L. 2002:** (1)(f)(II) and (1)(f)(III) R&RE, (1.5)(b) and (1.5)(d) amended, and (1.5)(f) added, pp. 1730, 1731, §§ 1, 2, effective October 1. **L. 2003:** (1)(f)(I) amended, p. 1317, § 4, effective August 6. **L. 2009:** (1)(g) added, (HB 09-1005), ch. 81, p. 298, § 1, effective April 2. **L. 2015:** (1)(f)(II) amended, (HB 15-1092), ch. 87, p. 252, § 7, effective August 5. **L. 2016:** (1)(a) and (2) amended, (SB 16-189), ch. 210, p. 789, § 96, effective June 6. **L. 2021:** (1)(a) and (2) amended, (SB 21-160), ch. 133, p. 543, § 18, effective September 7.

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Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

For the constitutionality of former § 32-4-124 under § 25 of art. II, Colo. Const., see Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker Metro. Dist., 140 Colo. 371, 344 P.2d 685 (1959).

Subsection (1)(a) does not allow metropolitan district to increase its mill levy beyond that set elsewhere in the Special District Act and in the special district's service plan. The phrase "[t]o levy and collect ad valorem taxes" can be read as describing the power of the district's board to tax up to the limits described elsewhere in the Special District Act and the special district's service plan. Prospect 34, LLC v. Gunnison County Bd., 2015 COA 160, 363 P.3d 819.

Test as to whether delay in issuance of bonds is fatal is reasonableness, prudence, or necessity. Where bonds are authorized by an election several years prior to their issuance, delay in their issuance is not fatal, the applicable test being whether the delay is reasonable, prudent, or necessary. Perl-Mack Civic Ass'n v. Bd. of Dirs. of Baker Metro. & San. Dist., 140 Colo. 371, 344 P.2d 685 (1959).

Debt service decrease not to prevent special election on tax levy. Any decrease in a district's debt service is a separate matter and cannot be offset against the increase in general revenue so as to reduce the percentage increase for purposes of determining whether a special election is required for a proposed tax levy. Stegon v. Pueblo W. Metro. Dist., 198 Colo. 128, 596 P.2d 1206 (1979).

Mill levy must comply with both this section and the service plan. A special district mill levy is illegal, even if it complies with the requirements of this section, if it exceeds the amount provided for in the district's approved service plan. Landmark Towers Ass'n v. UMB Bank, 2018 COA 100, __ P.3d __.

Applied in Lujan v. Colo. State Bd. of Educ., 649 P.2d 1005 (Colo. 1982).

32-1-1101.5. Special district debt - quinquennial findings of reasonable diligence.

(1) The results of special district ballot issue elections to incur general obligation indebtedness shall be certified by the special district by certified mail to the board of county commissioners of each county in which the special district is located or to the governing body of a municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 within forty-five days after the election. For all special districts with authorized but unissued general obligation debt approved before July 1, 1995, the results of the election at which such approval was given and a statement of the principal amount of any general obligation debt that has been issued pursuant to such authorization shall be so certified by the special district on or before January 1, 1996. If for any reason certification required by this subsection (1) is not made, the special district shall certify such election results by certified

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mail no later than thirty days before issuing any general obligation debt to the board of county commissioners or the governing body of such municipality. The special district shall file a copy of any certification made under this subsection (1) with the division of securities created by section 11-51-701, C.R.S., within the applicable time period prescribed in this subsection (1). Whenever a special district incurs general obligation debt, the special district shall submit a copy of the notice required by section 32-1-1604 to the board of county commissioners of each county in which the district is located or the governing body of such municipality within thirty days after incurring the debt.

(1.5) In every fifth calendar year after the calendar year in which a special district's ballot issue to incur general obligation indebtedness was approved by its electors, the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 may require the board of such special district to file an application for a quinquennial finding of reasonable diligence. If the board of county commissioners or the governing body of such municipality requires such filing, it shall notify the special district in writing to file an application within sixty days after receipt of the notice. The application shall set forth the amount of the special district's authorized and unissued general obligation debt, any current or anticipated plan to issue such debt, a copy of the district's last audit or application for exemption from audit, and any other information required by the board of county commissioners or the governing body of such municipality relevant to making the determinations under subsection (2) of this section. If required by the board of county commissioners or the governing body of such municipality, subsequent applications shall be filed within sixty days after receipt of such notice but no more frequently than every five years after the prior notice until all of the general obligation debt that was authorized by the election has been issued or abandoned. If a special district is wholly or partially located in a municipality that has not adopted a resolution of approval of such special district pursuant to section 32-1-204.5 or 32-1-204.7, the board of the special district shall file a copy of any such application with the governing body of such municipality, and such municipality may submit comments thereon prior to the determination made under subsection (2) of this section.

(2) (a) Within thirty days after submittal of any application required under subsection (1.5) of this section, the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 shall accept such application without further action or shall conduct a public hearing within the next thirty days, with no less than ten days prior notice to the district, to consider whether the service plan and financial plan of the district are adequate to meet the debt financing requirements of the authorized and unissued general obligation debt based upon present conditions within the district. Within thirty days after such hearing, the board of county commissioners or the governing body of the municipality shall:

(I) Determine that the implementation of the service plan or financial plan will result in the

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timely and reasonable discharge of the special district's general obligation debt. If the board of county commissioners or the governing body of the municipality makes such a finding, it shall grant a continuation of the authority for the board of the special district to issue any remaining authorized general obligation debt.

(II) Determine that the implementation of the service plan or financial plan will not result in the timely and reasonable discharge of the special district's general obligation debt and that such implementation will place property owners at risk for excessive tax burdens to support the servicing of such debt. If the board of county commissioners or the governing body of the municipality makes such a finding, it shall deny a continuation of the authority of the board of the special district to issue any remaining authorized general obligation debt.

(III) Determine that the implementation of the service plan or financial plan will not result in the timely and reasonable discharge of general obligation debt and require the board of the special district to submit amendments or modifications to such plans as a precondition to a finding of reasonable diligence; except that nothing in this section shall be construed as limiting the board's power to issue refunding bonds in accordance with statutory requirements.

(b) The board of county commissioners or the governing body of such municipality shall have all available legal remedies to enforce its determination under paragraph (a) of this subsection (2).

(3) The provisions of this section shall apply to all authorized but unissued general obligation debt for each special district organized under this title. All such authorized but unissued debt shall be valid until the board of county commissioners or the governing body of the municipality has made the determination to deny the continuation of such authority pursuant to subsection (2) of this section.

(4) Any determination made pursuant to this section is subject to judicial review by a district court. If the court finds the determination is arbitrary, capricious, or unreasonable, the court shall remand the matter to the board of county commissioners or to the governing body of the municipality to hold another hearing with no less than ten days prior notice to the district and for any other further action consistent with the court's direction to avoid the arbitrary, capricious, or unreasonable determination.

(5) Any action to enforce this section except an action brought under subsection (4) of this section shall be initiated only by the board of county commissioners or the governing body of a municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 or 32-1-204.7 and before any bonds are issued as authorized by law.

(6) Any determination made under this section before July 1, 1995, is hereby validated, unless decided otherwise in a legal proceeding instituted to challenge the determination. Any application for a quinquennial finding of reasonable diligence filed by a special district that is pending on July 1, 1995, and any subsequent application filed by a special district on or after

July 1, 1995, is subject to this section.

Source: L. 91: Entire section added, p. 792, § 20, effective June 4. **L. 92:** (3) amended, p. 970, § 13, effective June 1. **L. 95:** Entire section amended, p. 124, § 1, effective July 1. **L. 96:** (1) amended, p. 1772, § 75, effective July 1. **L. 2003:** (1), (1.5), IP(2)(a), and (5) amended, p. 1317, § 5, effective August 6.

32-1-1101.7. Establishment of special improvement districts within the boundaries of a special district.

(1) A special district may establish a special improvement district within the boundaries of the special district to finance all or part of the costs of any improvements, including forest health projects, as defined in section 37-95-103 (4.9), that the special district is authorized to finance if the power to levy assessments is authorized in the special district's service plan or statement of purposes or approved in writing by the county or municipality that approved the special district's service plan or accepted the special district's statement of purposes. The name of a special improvement district established on or after August 5, 2015, must include the name of the special district that established the special improvement district.

(2) If a special improvement district is established within the boundaries of a special district, assessments shall be levied on a frontage, area, zone, or other equitable basis and only:

(a) With the written consent of one hundred percent of the owners of the property to be assessed; or

(b) Upon approval of a majority of the eligible electors, as defined in section 32-1-103 (5), within the special improvement district voting thereon.

(3) The method of creating a special improvement district, making the improvements specified for the special improvement district, and the levying and collecting of assessments for the costs of the improvements specified for the special improvement district shall be as provided in part 5 of article 25 of title 31, C.R.S., as amended, subject to the following:

(a) The special district shall have all the rights, powers, and duties of the municipality as set forth in parts 5 and 11 of article 25 of title 31, C.R.S.

(b) The board shall perform the duties of the governing body as set forth in part 5 of article 25 of title 31, C.R.S.

(c) The chairman and president of the special district shall perform the duties of the mayor as set forth in part 5 of article 25 of title 31, C.R.S.

(d) The secretary of the special district shall perform the duties of the municipal clerk as set forth in part 5 of article 25 of title 31, C.R.S.

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(e) The board shall appoint a person to perform the duties of the municipal treasurer as set forth in part 5 of article 25 of title 31, C.R.S.

(f) All actions by the board pursuant to the provisions of part 5 of article 25 of title 31, C.R.S., shall be by resolution, notwithstanding any reference in said part 5 to action by ordinance.

(g) Any bonds payable from the assessments shall be approved by a majority of the eligible electors, as defined in section 32-1-103 (5), voting on the question of issuing such bonds. The board may determine by resolution whether the eligible electors voting on the question shall be:

(I) The eligible electors of the special district; or

(II) The eligible electors of the special improvement district.

Source: L. 2009: Entire section added, (HB 09-1005), ch. 81, p. 298, § 2, effective April 2. **L. 2015:** (1) amended, (HB 15-1092), ch. 87, p. 252, § 8, effective August 5. **L. 2021:** (1) amended, (HB 21-1008), ch. 159, p. 907, § 7, effective May 20.

32-1-1102. Special financial provisions - fire protection districts. (Repealed)

Source: L. 81: Entire article R&RE, p. 1604, § 1, effective July 1. **L. 86:** Entire section repealed, p. 1027, § 8, effective January 1, 1987.

32-1-1103. Special financial provisions - health service districts.

(1) In addition to the powers specified in section 32-1-1101, the board of any health service district has the following powers for and on behalf of such district:

(a) (I) Repealed.

(II) To levy, in health service districts with a valuation for assessment on real and personal property of fifteen million dollars or less contracting bonded indebtedness not to exceed three percent of the total valuation for assessment within the health service district to be fully paid within a twenty-year period from the date of incurring the indebtedness, on all taxable property within such district without limitations as to rate or amount for purposes of retiring the indebtedness created in accordance with the provisions of section 32-1-1101 (2);

(III) To levy, in health service districts with a valuation for assessment on real and personal property of over fifteen million dollars contracting bonded indebtedness not to exceed five percent of the total valuation for assessment within the health service district to be fully paid within a twenty-year period from the date of incurring the indebtedness, on all taxable property within such district without limitations as to rate or amount for purposes of retiring the

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indebtedness created in accordance with the provisions of section 32-1-1101 (2);

(IV) To levy, in health service districts with a population of twenty thousand or less with a valuation for assessment on real and personal property of over fifteen million dollars contracting bonded indebtedness not to exceed twenty percent of the total valuation for assessment within the health service district to be fully paid within a twenty-year period from the date of incurring the indebtedness, on all taxable property within such district without limitations as to rate or amount for purposes of retiring the indebtedness created in accordance with the provisions of section 32-1-1101 (2);

(b) To issue without an election, pursuant to an authorizing resolution and subject to the provisions and contractual limitations in resolutions authorizing outstanding bonds and other securities of the health service district, securities to defray, in whole or in part, the cost of a project in the manner provided in and subject to the limitations imposed by subsection (3) of this section.

(2) Notwithstanding any other provisions of this article, all moneys belonging to or collected on behalf of the health service district shall be deposited, in the discretion of the board, with either the treasurer of the county in which the greatest percentage of the valuation for assessment of the taxable property of the district is located or in a depository enumerated in section 24-75-603, C.R.S., to the account of the health service district. All expenditures therefrom of the moneys shall be made upon warrants or checks duly drawn on said account and signed by the president and secretary-treasurer of the health service district. The board may invest any moneys of the district not required to meet the immediate expenses of the district in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(3) (a) (I) The project for which securities are issued pursuant to paragraph (b) of subsection (1) of this section may be the acquisition, by purchase, construction, or otherwise, the improvement, or the equipment, or any combination thereof, for the purposes set forth in section 32-1-1003 (1)(a) or any other building, structure, or land necessary or desirable for use in connection with the operations of a health service district.

(II) The cost of the project may include, in the board's discretion, all incidental costs pertaining to the project and the financing thereof, including, without limitation, contingencies and the capitalization, with proceeds of securities, of operation and maintenance expenses appertaining to facilities to be acquired and interest on the securities for any period not exceeding the period estimated by the board to effect the project plus one year, of any discount on the securities, and of any reserves for payment of principal of and interest on the securities.

(b) The board may issue interim securities, which may be designated "bonds", "notes", or "warrants", evidencing any emergency loans, construction loans, and other temporary loans not exceeding three years, in supplementation of long-term financing, such interim securities to be funded with the proceeds of long-term securities, net pledged revenues, or further interim

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securities, or any combination thereof, as the board may determine.

(c) (I) Except to the extent inconsistent with the provisions of this section, any securities issued pursuant to this section for any project shall be issued in the form and manner and with the effect provided in sections 11-54-111 and 11-54-112, C.R.S., for public securities issued under the "Refunding Revenue Securities Law".

(II) The authorizing resolution, trust indenture, or other instrument appertaining thereto may contain any of the covenants, and the board may do such acts and things, as are permitted in section 11-54-113, C.R.S.

(III) Revenue obligations issued to refund revenue bonds of a health service district and to refund securities issued under this section may be issued under the "Refunding Revenue Securities Law".

(d) The securities shall be payable and collectible, as to principal, interest, and any prior redemption premium, solely out of net pledged revenues, and the holder thereof may not look to any general or other fund for the payment of such securities except the net revenues pledged therefor. The securities shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation, if any provision or limitation appertains thereto. The securities shall not be considered or held to be general obligations of the health service district but shall constitute its special obligations, and the full faith and credit of the health service district shall not be pledged for their payment. The payment shall not be secured by an encumbrance, mortgage, or other pledge of property of the health service district, except for its pledged revenues. No property of the health service district, subject to said exception, shall be liable to be forfeited or taken in payment of securities.

(e) A resolution providing for the issuance of bonds or other securities under this section or an indenture or other proceedings appertaining thereto may provide that the securities contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(f) The determination of the board that the limitations imposed under this subsection (3) upon the issuance of securities under this section have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion, regardless of whether the authorizing resolution or the securities thereby authorized contain a recital as authorized by paragraph (e) of this subsection (3).

(g) Nothing in this section or in any other law shall be deemed to impair the existing obligations of contract embodied in outstanding bonds validly issued under the statutes in force at the times of their issue prior to July 1, 1971.

(h) Bonds and other securities issued under the provisions of this section, their transfer, and the income therefrom shall forever remain free and exempt from taxation by this state or any

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political subdivision thereof.

(i) (I) This section, without reference to other statutes of this state, except as otherwise expressly provided in this section, constitutes full authority for the exercise of the incidental powers granted in this section concerning the borrowing of money to defray wholly or in part the cost of any project and the issuance of securities to evidence such loans.

(II) The powers conferred by this section are in addition and supplemental to and not in substitution for, and the limitations imposed by this section shall not affect, the powers conferred by any other law.

(III) Nothing in this section shall be construed as preventing the exercise of any power granted to the board or to a health service district acting by and through its board or any officer, agent, or employee thereof by any other law.

Source: L. 81: Entire article R&RE, p. 1605, § 1, effective July 1. **L. 86:** (1)(a)(I) amended, p. 1069, § 1, effective March 26; (1)(a)(I) repealed, pp. 1027, 1030, §§ 8, 16, effective January 1, 1987. **L. 89:** (2) amended, p. 1134, § 82, effective July 1. **L. 91:** (1)(a)(IV) added, p. 793, § 21, effective June 4. **L. 96:** IP(1), (1)(a)(II), (1)(a)(III), (1)(a)(IV), (1)(b), (2), (3)(a)(I), (3)(c)(III), (3)(d), and (3)(i)(III) amended, p. 475, § 17, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

Cross references: For the "Refunding Revenue Securities Law", see article 54 of title 11.

32-1-1104. Special financial provisions - park and recreation districts. (Repealed)

Source: L. 81: Entire article R&RE, p. 1607, § 1, effective July 1. **L. 86:** Entire section repealed, p. 1027, § 8, effective January 1, 1987.

32-1-1105. Special financial provisions - tunnel districts.

(1) In addition to the powers specified in section 32-1-1101, the board of any tunnel district has the following powers for and on behalf of such district:

(a) To fix and from time to time increase or decrease tolls or other charges for the use of any tunnel and to pledge the same for the payment of principal of and interest and any prior redemption premium on any securities or other obligations of the tunnel district issued in connection with the acquisition, construction, improvement, equipping, operation, maintenance, or financing of a tunnel located in whole or in part within such tunnel district;

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(b) To issue without an election, pursuant to an authorizing resolution and subject to the provisions and contractual limitations and resolutions authorizing outstanding bonds and other securities of the tunnel district, securities to defray, in whole or in part, the costs of one or more tunnel projects in the manner provided in and subject to the limitations imposed by subsection (2) of this section;

(c) To invest or deposit moneys belonging to or collected by and on behalf of the tunnel district in accordance with the requirements established in part 6 of article 75 of title 24, C.R.S. In addition, a tunnel district may direct a corporate trustee which holds funds of the tunnel district to invest or deposit such funds in investments or deposits other than those specified by said part 6 if the board determines by resolution that such investments or deposits meet the standard established in section 15-1-304, C.R.S., if the income is at least comparable to income available on investments or deposits specified by said part 6, and if such investments will assist the tunnel district in the acquisition, construction, improvement, equipping, operation, maintenance, or financing of a tunnel.

(2) (a) (I) The tunnel project for which securities are issued pursuant to paragraph (b) of subsection (1) of this section may be the acquisition, construction, improvement, equipping, operation, or maintenance, or any combination thereof, of any land, tunnel, building, structure, equipment, or other property necessary or desirable for use in connection with the operations of a tunnel district.

(II) The cost of the project may include, in the board's discretion, all incidental costs pertaining to the project and the financing thereof, including, without limitation, contingencies and the capitalization, with proceeds of securities, of operation and maintenance expenses appertaining to the tunnel project and interest on the securities for any period not exceeding the period estimated by the board to effect the acquisition, construction, improvement, or equipping of the tunnel project plus one year, of any discount on the securities, and of any reserves for payment of principal of and interest on the securities.

(b) The board may issue interim securities, which may be designated "bonds", "notes", or "warrants", evidencing any emergency loans, any acquisition, construction, improvement, equipping, operation, or maintenance loans, and any other temporary loans not exceeding three years in supplementation of long-term financing, such interim securities to be funded with the proceeds of long-term securities, net pledged revenues, or further interim securities, or any combination thereof, as the board may determine.

(c) (I) Except to the extent inconsistent with the provisions of this section, any securities issued pursuant to this section for any tunnel project shall be issued in the form and manner and with the effect provided in sections 11-54-111 and 11-54-112, C.R.S., for public securities issued under the "Refunding Revenue Securities Law", article 54 of title 11, C.R.S.

(II) The authorizing resolution, trust indenture, or other instrument appertaining thereto may

contain any of the covenants, and the board may do such acts and things, as are permitted in section 11-54-113, C.R.S.

(III) Revenue obligations issued to refund revenue bonds of a tunnel district and to refund securities issued under this section may be issued under the "Refunding Revenue Securities Law", article 54 of title 11, C.R.S.

(d) The securities shall be payable and collectible, as to principal, interest, and any prior redemption premium, solely out of net pledged revenues, and the holder thereof may not look to any general or other fund for such payment of such securities except the net revenues pledged therefor. The securities shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation if any such provision or limitation appertains thereto. The securities shall not be considered or held to be general obligations of the tunnel district but shall constitute its special obligations, and the full faith and credit of the tunnel district shall not be pledged for their payment. Such payment shall not be secured by an encumbrance, a mortgage, or any other pledge of property of the tunnel district, except for its pledged revenues. No property of the tunnel district, subject to said exception, shall be liable to be forfeited or taken in payment of securities.

(e) A resolution providing for the issuance of bonds or other securities under this section or an indenture or other proceedings appertaining thereto may provide that the securities contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and the regularity of their issuance.

(f) The determination of the board that the limitations imposed under this subsection (2) upon the issuance of securities under this section have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion, regardless of whether the authorizing resolution or the securities thereby authorized contain a recital as authorized by paragraph (e) of this subsection (2).

(g) Bonds and other securities issued under the provisions of this section, their transfer, and the income therefrom shall forever remain free and exempt from taxation by this state or any political subdivision thereof.

(h) (I) Except as otherwise expressly provided in this section, this section, without reference to other statutes of this state, constitutes full authority for the exercise of the incidental powers granted in this section concerning the borrowing of money to defray, in whole or in part, the cost of any tunnel project and the issuance of securities to evidence such loans.

(II) The powers conferred by this section are in addition and supplemental to and not in substitution for, and the limitations imposed by this section shall not affect, the powers conferred by any other law.

(III) Nothing in this section shall be construed as preventing the exercise of any power

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granted to the board or to a tunnel district acting by and through its board or any officer, agent, or employee thereof by any other law.

(3) The state hereby pledges and agrees with the holders of any bonds or other obligations issued by any tunnel district that the state will not limit, alter, restrict, or impair the rights vested in the tunnel district to fulfill the terms of any agreements made with the holders of bonds or other securities authorized and issued pursuant to the provisions of this section. The state further agrees that it will not in any way impair the rights or remedies of the holders of any bonds or securities of the tunnel district until such bonds or securities have been paid or until adequate provision for payment thereof has been made. The tunnel district may include this provision and undertaking of the state in such bonds or other securities.

Source: L. 87: Entire section added, p. 1233, § 4, effective May 13. **L. 89:** (1)(c) amended, p. 1117, § 35, effective July 1.

Editor's note: Subsection (3) was originally numbered as subsection (5) by chapter 242, Session Laws of Colorado 1987, p. 1233, but was renumbered on revision.

32-1-1106. Special financial provisions - metropolitan districts that provide fire protection, street improvement, safety protection, or transportation services.

(1) In addition to the powers specified in section 32-1-1101, the board of a metropolitan district organized with fire protection, street improvement, safety protection, or transportation powers as described in section 32-1-1004 (2)(a), (2)(d), (2)(f), (2)(h), and (5) has the power, for and on behalf of the district, to levy a uniform sales tax, at a rate determined by the board, upon every transaction or other incident with respect to which a sales tax is levied by the state that occurs within any area of the district that is not also within the boundaries of an incorporated municipality subject to the following limitations:

(a) The board may levy the tax only if the question of levying the tax is submitted to and approved by a majority of the registered electors of the portion of the district in which the tax is to be levied voting at a regular district election or at a special election held on the Tuesday after the first Monday of November in an even-numbered year or on the first Tuesday of November in an odd-numbered year in accordance with this article and section 20 of article X of the state constitution. The ballot issue shall provide that the tax to be levied shall be in addition to any other taxes levied by the district. The district shall pay all costs of the election, and no district moneys may be used to urge or oppose passage of the ballot issue submitted at the election.

(b) The net revenues of any sales or use tax levied may be used only to fund one or more of the following:

(I) Safety protection, as described in section 32-1-1004 (2)(d), in areas of the district in which the tax is to be levied;

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(II) Street improvement, as described in section 32-1-1004 (2)(f), in areas of the district in which the tax is to be levied;

(III) Transportation, as described in, and limited by the provisions of, section 32-1-1004 (2)(h) and (5); or

(IV) Fire protection, as described in section 32-1-1004 (2)(a), in areas of the district in which the tax is to be levied.

(2) (a) The collection, administration, and enforcement of any sales tax levied by a metropolitan district pursuant to subsection (1) of this section shall be performed by the executive director of the department of revenue in the same manner as that for the collection, administration, and enforcement of the state sales tax levied pursuant to article 26 of title 39, C.R.S., including, without limitation, the retention by a vendor of the percentage of the amount remitted to cover the vendor's expense in the collection and remittance of the sales tax as provided in section 39-26-105, C.R.S. The executive director shall make monthly distributions of sales tax collections to the district. The district shall pay the net incremental cost incurred by the department in the administration and collection of the sales tax.

(b) (I) A qualified purchaser may provide a direct payment permit number issued pursuant to section 39-26-103.5, C.R.S., to a vendor or retailer that is liable and responsible for collecting and remitting any sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article. A vendor or retailer that has received a direct payment permit number in good faith from a qualified purchaser shall not be liable or responsible for collection and remittance of any sales tax levied on a sale that is paid for directly from the qualified purchaser's funds and not the personal funds of an individual.

(II) A qualified purchaser that provides a direct payment permit number to a vendor or retailer shall be liable and responsible for the amount of sales tax levied on a sale made to the qualified purchaser pursuant to the provisions of this article in the same manner as liability would be levied on a qualified purchaser for state sales tax pursuant to section 39-26-105 (3), C.R.S.

(3) Revenues raised by a metropolitan district through the levy of a sales tax pursuant to subsection (1) of this section shall be in addition to and shall not be used to supplant any state funding that the district or any county, municipality, regional transportation authority, or other governmental entity that has transportation-related powers and that includes territory located within the district would otherwise be entitled to receive from the state or any other local government, including, but not limited to, any existing or budgeted department of transportation funding of any portion of the state highway system within the territory of the authority.

Source: L. 2010: Entire section added, (HB 10-1243), ch. 385, p. 1802, § 2, effective August 11. **L. 2012:** (1)(a) amended, (HB 12-1292), ch. 181, p. 689, § 42, effective May 17. **L. 2019:**

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IP(1) and (1)(b) amended, (HB 19-1047), ch. 39, p. 133, § 1, effective August 2.

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PART 12
LEVY AND COLLECTION OF TAXES

Cross references: For the constitutional provision that establishes limitations on spending, the imposition of taxes, and the incurring of debt, see § 20 of article X of the Colorado constitution.

32-1-1201. Procedure.

(1) Except as provided in subsection (2) of this section, the board shall determine in each year the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the special district, and shall fix a rate of levy which, when levied upon every dollar of valuation for assessment of taxable property within the special district and together with other revenues, will raise the amount required by the special district annually to supply funds for paying expenses of organization and the costs of constructing, operating, and maintaining the facilities and improvements of the special district and to pay in full, promptly, when due, all interest on and principal of bonds and other obligations of the special district. In the event of accruing defaults or deficiencies, an additional levy may be made as provided in subsection (2) of this section.

(2) The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years and shall make ample provision for the payment thereof. If the moneys produced from such levies, together with other revenues of the special district, are not sufficient to pay punctually the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and, notwithstanding any limitation provided in part 11 of this article, such taxes shall be made and continue to be levied until the indebtedness of the district is fully paid.

(3) In accordance with the schedule prescribed by section 39-5-128, C.R.S., the board shall certify to the board of county commissioners of each county within the special district, or having a portion of its territory within the district, the rate so fixed in order that, at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the valuation for assessment of all taxable property within the special district. When necessary, a special district shall, with respect to an increased mill levy, comply with the requirements of part 3 of article 1 of title 29, C.R.S.

Source: L. 81: Entire article R&RE, p. 1607, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of

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the index.

32-1-1202. County officers to levy and collect - lien.

It is the duty of the body having authority to levy taxes within each county to levy the taxes provided by section 32-1-1201 (1) and (2). It is the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected to pay the same to the special district ordering the levy and collection. The payment of such collections shall be made monthly to the treasurer of the special district or paid into the depository thereof to the credit of the special district. All taxes levied under this part 12, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general taxes.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

ANNOTATION

The mere existence of a water and sanitation district and the prospect of taxes in the future was not a lien, encumbrance, or defect on the title to property. Edwards v. St. Paul Title Co., 39 Colo. App. 235, 563 P.2d 979 (1977) (decided under former § 32-4-117).

32-1-1203. Sale for delinquencies.

If the taxes levied are not paid, delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest, and penalties in the manner provided by the statutes of this state for selling real property for the nonpayment of general taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the county, and the county shall account to the special district in the same manner as provided by law for accounting for school, town, and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: The provisions of this section are similar to provisions of several former sections as they existed prior to 1981. For a detailed comparison, see the comparative tables located in the back of the index.

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Cross references: For distraint and sale of personal property, see § 39-10-111; for the sale of tax liens, see article 11 of title 39.

32-1-1204. Liability of property included or excluded from district.

All real property included within, or excluded from, a special district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of inclusion or exclusion as provided in parts 4 and 5 of this article.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: This section is similar to former § 32-2-123 as it existed prior to 1981.

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PART 13
SPECIAL DISTRICT REFUNDING

32-1-1301. Legislative declaration - applicability.

It is hereby declared that the orderly refunding of any general obligation bonds and any other lawful general obligation indebtedness incurred by any special district, when advantageous to the special district or persons within the special district, will serve a public use and will promote the health, safety, security, and general welfare of the inhabitants thereof and of the people of this state. It is hereby further declared to be the intent of this general assembly that any bonds issued pursuant to this part 13 are not to be considered as additional debt incurred by the special district. It is the intent of this part 13 to provide for a uniform mechanism for refunding for special districts.

Source: L. 81: Entire article R&RE, p. 1608, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-901 as it existed prior to 1981.

32-1-1302. Refunding bonds.

(1) Any general obligation bonds issued and any other lawful general obligation indebtedness incurred by any special district may be refunded without an election of the special district issuing or incurring the same, or any successor thereof, in the name of the special district which issued or incurred the indebtedness being refunded, subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto.

(2) Said refunding may be accomplished by the issuance of bonds to refund, pay, and discharge all or any part of such outstanding indebtedness, including part of a single issue of general obligation bonds and including any interest thereon in arrears or about to become due, and for the purpose of:

(a) Avoiding or terminating any default in the payment of interest on or principal of, or both principal of and interest on, said indebtedness;

(b) Reducing interest costs or effecting other economies;

(c) Modifying or eliminating restrictive contractual limitations relating to the incurring of additional indebtedness or to any system or facility, or improvement thereto; or

(d) Any combination of the foregoing purposes.

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(3) Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this part 13 for an original issue of bonds.

(4) Any revenue bonds issued or any other obligation pledging solely the revenue of the special district incurred by any special district may be refunded in the manner provided by section 31-35-412, C.R.S., or article 54 or 56 of title 11, C.R.S.

Source: L. 81: Entire article R&RE, p. 1609, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-902 as it existed prior to 1981.

32-1-1303. Limitations upon issuance.

(1) No general obligation bond or other general obligation indebtedness may be refunded unless the holder thereof voluntarily surrenders the same for exchange or payment or the said indebtedness either matures or is callable for prior redemption under its terms within ten years from the date of issuance of the refunding bonds, and provision shall have been made in said refunding for paying the bonds or other indebtedness being refunded within said period of time.

(2) The refunding bonds may mature at one time or from time to time but not exceeding thirty years from the date of issuance of the refunding bonds. The interest rates on such refunding bonds shall be determined by the board.

(3) The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds or other indebtedness being refunded if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued cost of the indebtedness refunded except:

(a) To the extent any interest on the indebtedness refunded in arrears or about to become due is capitalized with the proceeds of said refunding bonds; or

(b) To the extent necessary to capitalize and pay, with the proceeds of said refunding bonds, the following:

(I) All costs and expenses of said refunding procedures;

(II) The amounts of the prior redemption premiums, if any, on the indebtedness being refunded; and

(III) Any interest in arrears or about to become due and payable.

(4) The principal amount of the refunding bonds may also be less than or the same as the principal amount of the indebtedness being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

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Source: L. 81: Entire article R&RE, p. 1609, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-903 as it existed prior to 1981.

32-1-1304. Use of proceeds of refunding bonds.

The proceeds of general obligation refunding bonds shall either be immediately applied to the retirement of the indebtedness being refunded or be placed in escrow in any state or national bank within this state which is a member of the federal deposit insurance corporation and which has trust powers to be applied to the payment of the indebtedness being refunded upon presentation therefor; but, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses, and any accrued interest on the refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom to pay the indebtedness being refunded as the same becomes due at their respective maturities or due at any designated prior redemption dates in connection with which the board shall exercise a prior redemption option. Any purchaser of any refunding bond issued under this part 13 shall in no manner be responsible for the application of the proceeds thereof by the special district or any of its officers, agents, or employees.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1. **L. 89:** Entire section amended, p. 1134, § 83, effective July 1.

Editor's note: This section is similar to former § 32-1-904 as it existed prior to 1981.

32-1-1305. Combination of refunding and other bonds.

General obligation bonds for refunding and general obligation bonds for any other purpose authorized in this article may be issued separately or issued in combination in one or more series by any special district.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-905 as it existed prior to 1981.

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32-1-1306. Board's determination final.

The determination of the board that the limitations under this part 13 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1.

Editor's note: This section is similar to former § 32-1-906 as it existed prior to 1981.

32-1-1307. Construction of part 13.

(1) The powers conferred by this part 13 are in addition and supplemental to, and not in substitution for, and the limitations imposed by this part 13 shall not affect the powers conferred by any other law. Bonds may be issued under this part 13 without regard to the provisions of any other law. Insofar as the provisions of this part 13 are inconsistent with the provisions of any other law, the provisions of this part 13 shall be controlling.

(2) This part 13 shall be liberally construed in order to accomplish its purposes.

Source: L. 81: Entire article R&RE, p. 1610, § 1, effective July 1.

Editor's note: This section is similar to former §§ 32-1-907 and 32-1-908 as they existed prior to 1981.

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PART 14
COMPOSITION OR ADJUSTMENT OF INDEBTEDNESS OF LOCAL TAXING DISTRICTS

32-1-1401. Legislative declaration.

The general assembly hereby declares this part 14 to be necessary in order to provide for the orderly and equitable payment of the obligations of local taxing districts organized under the provisions of this article, which payment may be effected by a plan of adjustment of the debts of such taxing districts under the federal bankruptcy law. The general assembly further declares that the necessity of such taxing districts availing themselves of the provisions of the federal bankruptcy law results from unanticipated economic and fiscal conditions affecting such taxing districts, rendering such taxing districts unable to discharge their indebtedness as the same becomes due and imposing a severe hardship on the taxpayers therein to the detriment not only of the credit of such taxing districts and that of all political subdivisions of the state of Colorado but also of the creditors of such taxing districts.

Source: L. 90: Entire part added, p. 1508, § 1, effective May 24.

32-1-1402. Definitions.

As used in this part 14, unless the context otherwise requires:

(1) "Federal bankruptcy law" means chapter 9 of title 11, U.S.C., as the same may be from time to time amended, or any act of congress relating to the adjustment or composition of indebtedness of municipalities enacted pursuant to article I, section 8, clause 4, of the United States constitution concerning uniform laws on the subject of bankruptcy.

(2) "Insolvent taxing district" means a taxing district which is able to show to the United States bankruptcy court in and for the district of Colorado that it has been unsuccessful with other existing alternatives to bankruptcy and which would be unable to discharge its obligations as they become due by means of a mill levy of not less than one hundred mills to be imposed by:

(a) The taxing district; or

(b) Any other taxing district pursuant to a contract which pledges the revenues of such contract to the payment of such obligations.

(3) "Plan" means a plan for the adjustment of the debtor's debts under federal bankruptcy law filed by an insolvent taxing district.

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(4) "Taxing district" means a special district which is organized or acting under the provisions of this article.

Source: L. 90: Entire part added, p. 1508, § 1, effective May 24.

32-1-1403. Petition.

Any insolvent taxing district is hereby authorized to file a petition authorized by federal bankruptcy law and to take any and all action necessary or proper to carry out the plan filed with said petition, or any modification of such plan thereafter accepted in writing by said district, if such original or modified plan is approved pursuant to federal bankruptcy law.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

ANNOTATION

Applied in In re Ravenna Metro. Dist., 522 B.R. 656 (Bankr. D. Colo. 2014).

32-1-1403.5. Notice and hearing by board.

The board shall file a petition under section 32-1-1403 only at a regular or special meeting after publication of notice and postcard or letter notification to property owners within the district and to the division of local government in the department of local affairs of the place, time, and date of such meeting and such proposed action. Postcard or letter notification shall be mailed to property owners within the special district, as listed on the records of the county assessor on the date requested, not less than ten days prior to such meeting.

Source: L. 91: Entire section added, p. 794, § 22, effective June 4.

32-1-1404. Powers.

The plan may include provisions for the modification of the existing contracts of the taxing district as evidenced by its bonds or otherwise. Such plan may adapt or alter the procedures provided by the statutes of Colorado for the levy, certification, and collection of general taxes to conform to the provisions of the court approved plan of adjustment, in accordance with federal bankruptcy law; except that nothing in this part 14 shall be construed to impair the rights of persons who have purchased property at tax sale. If the court approved plan provides for the issuance of new obligations of such taxing district for delivery to the creditors of the taxing district in exchange for outstanding obligations of such taxing district, such new obligations may

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be issued on the terms or conditions found in the plan of adjustment, regardless of any contrary state statute. Nothing in this part 14 shall impair the claims which creditors may have against persons who are not subject to jurisdiction of the court pursuant to chapter 9 of title 11, U.S.C. Any such plan proposed may provide for payments to creditors on terms and conditions which differ from the original contract if the present value of the total payments under the provisions of the plan do not exceed the present value of the total payments under the original contract.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

32-1-1405. Powers not limited by this part 14.

The enumeration of powers in this part 14 shall not exclude powers not mentioned and elsewhere conferred which may be necessary for or incidental to the accomplishment of the purposes of this part 14 and the consummation of a plan approved as provided in this part 14.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

32-1-1406. Validation of bankruptcy filings and approvals.

The filing of a petition or a plan under the federal bankruptcy law by an insolvent taxing district prior to May 24, 1990, the approval of the plan of an insolvent taxing district prior to May 24, 1990, and any proceedings related to any such filing or approval are hereby validated.

Source: L. 90: Entire part added, p. 1509, § 1, effective May 24.

32-1-1407. Repeal of part. (Repealed)

Source: L. 90: Entire part added, p. 1510, § 1, effective May 24. **L. 93:** Entire section repealed, p. 225, § 1, effective March 31.

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PART 15
RELIEF OF RESIDENTIAL TAXPAYERS FROM LIEN OF SPECIAL DISTRICT TAXES FOR GENERAL OBLIGATION INDEBTEDNESS

32-1-1501 to 32-1-1505. (Repealed)

Source: L. 92: Entire part repealed, p. 993, § 1, effective July 1.

Editor's note: This part 15 was added in 1991 and was not amended prior to its repeal in 1992. For the text of this part 15 prior to 1992, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume.

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PART 16
CERTIFICATION AND NOTICE OF SPECIAL DISTRICT TAXES FOR GENERAL OBLIGATION INDEBTEDNESS

32-1-1601. Legislative declaration.

The general assembly hereby finds and declares that special districts are political subdivisions and instrumentalities of the state of Colorado and local governments thereof. The general assembly further finds that defaults in payment of general obligation debts and the possibility of further defaults by some special districts have resulted in a general loss of confidence by investors in bonds and undertakings of all types issued or to be issued by local governments of the state and have imposed severe hardship on investors in general obligation bonds of special districts and upon owners of residential real property within such districts. The general assembly further finds that this part 16 is necessary to protect the credit reputation of local governments of this state, to restore confidence of investors in local government obligations, and to protect owners of residential real property within special districts.

Source: L. 92: Entire part added, p. 993, § 2, effective July 1.

ANNOTATION

Special district, as a political subdivision of the state, possesses only those powers that are expressly conferred upon it by the constitution and by statute and such incidental implied powers as are reasonably necessary to carry out the express powers so conferred. Romer v. Fountain Sanitation Dist., 898 P.2d 37 (Colo. 1995).

32-1-1602. Definitions.

As used in this part 16, unless the context otherwise requires:

(1) "General obligation debt" means an obligation of a special district created by a resolution of the special district authorizing the issuance of bonds or a contract, the obligations of which are backed by a pledge of the full faith and credit of the special district and a covenant to impose mill levies without limit to retire the bonds or fund the contractual obligation.

(2) "Special district" shall have the same meaning as provided in section 32-1-103 (20).

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

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32-1-1603. Separate mill levies - certification to county commissioners.

After July 1, 1992, special districts which levy taxes for payment of general obligation debt shall certify separate mill levies to the board of county commissioners, one each for funding requirements of each such debt in accordance with the relevant contracts or bond resolutions which identifies each bond issue by series, date, coupon rate, and maturity and each contract by title, date, principal amount, and maturity and one for the remainder of the budget of said district.

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

32-1-1604. Recording.

Whenever a special district authorizes or incurs a general obligation debt, a notice of such action and a description of such debt in a form prescribed by the director of the division of local government in the department of local affairs shall be recorded by the special district with the county clerk and recorder in each county in which the district is located. The recording shall be done within thirty days after authorizing or incurring the debt.

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

32-1-1605. Limitations on actions - prior law.

Any claim for relief under section 32-1-1504, as it existed prior to July 1, 1992, shall be commenced on or before January 1, 1993, and not thereafter.

Source: L. 92: Entire part added, p. 994, § 2, effective July 1.

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PART 17
PROPERTY TAX REDUCTION AGREEMENT

32-1-1701. Legislative declaration.

The general assembly hereby finds and declares that the health, safety, and welfare of the people of this state are dependent upon the attraction of new private enterprise as well as the retention and expansion of existing private enterprise; that incentives are often necessary in order to attract private enterprise; and that providing incentives stimulates economic development in the state and results in the creation and maintenance of new jobs.

Source: L. 2005: Entire part added, p. 106, § 1, effective August 8.

32-1-1702. New business facilities - expanded or existing business facilities - incentives - limitations - authority to exceed revenue-raising limitation.

(1) Notwithstanding any law to the contrary, a special district may negotiate for an incentive payment or credit with a taxpayer who establishes a business facility, as defined in section 39-30-105.1 (6)(b), in the special district. In no instance may any negotiation result in an annual incentive payment or credit that is greater than the amount of taxes levied by the special district upon the taxable business personal property located at or within the business facility and used in connection with the operation of the business facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (1) may not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (1) may not exceed thirty-five years, which does not include the term of any prior agreement.

(1.5) (a) Notwithstanding any law to the contrary, a special district may negotiate an incentive payment or credit for a taxpayer that has an existing business facility located in the special district if, based on verifiable documentation, the special district is satisfied that there is a substantial risk that the taxpayer will relocate the facility out of state.

(b) The documentation required pursuant to paragraph (a) of this subsection (1.5) must include information that the taxpayer could reasonably and efficiently relocate the facility out of state and that at least one other state is being considered for the relocation. In order to be eligible for a payment or credit under this subsection (1.5), a taxpayer must identify the specific reasons why the taxpayer is considering leaving the state.

(c) A special district shall not give an annual incentive payment or credit under this subsection (1.5) that is greater than the amount of the taxes levied by the special district upon the

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taxable personal property located at or within the existing business facility and used in connection with the operation of the existing business facility for the current property tax year. The term of an agreement made prior to August 6, 2014, pursuant to this subsection (1.5) shall not exceed ten years, and this limit includes any renewals of the original agreement. The term of an agreement made on or after August 6, 2014, pursuant to this subsection (1.5) shall not exceed thirty-five years, and this limit does not include the term of any prior agreement. A special district shall not give an annual incentive payment or credit under this subsection (1.5), unless the board of the special district approves the payment or credit at a public hearing.

(2) Notwithstanding any law to the contrary, a special district may negotiate for an incentive payment or credit with a taxpayer who expands a facility, as defined in section 39-30-105.1 (6)(e), the expansion of which authorizes a taxpayer to claim a credit described in section 39-30-105.1, and that is located in the special district. In no instance may any negotiation result in an annual incentive payment or credit that is greater than the amount of the taxes levied by the special district upon the taxable business personal property directly attributable to the expansion located at or within the expanded facility and used in connection with the operation of the expanded facility for the current property tax year. The term of any agreement made prior to August 6, 2014, pursuant to the provisions of this subsection (2) may not exceed ten years, including the term of any original agreement being renewed. The term of any agreement made on or after August 6, 2014, pursuant to this subsection (2) may not exceed thirty-five years, which does not include the term of any prior agreement.

(3) A special district shall not enter into an agreement pursuant to the provisions of this section unless, prior to or simultaneous with the execution of the agreement, the taxpayer also enters into an agreement with a municipality or county pursuant to section 30-11-123, 31-15-903, or 39-30-107.5, C.R.S.

(4) A special district that negotiates an agreement pursuant to the provisions of this section shall inform any municipality and county in which a new business facility would be located, or an existing or expanded business facility is located, whichever is applicable, of such negotiations.

Source: L. 2005: Entire part added, p. 106, § 1, effective August 8. **L. 2007:** (1) and (2) amended, p. 351, § 6, effective August 3. **L. 2012:** (1) and (2) amended, (HB 12-1029), ch. 61, p. 221, § 5, effective August 8. **L. 2013:** (1.5) added and (4) amended, (HB 13-1206), ch. 374, p. 2205, § 3, effective August 7. **L. 2014:** (1), (1.5)(c), and (2) amended, (SB 14-183), ch. 196, p. 722, § 3, effective August 6. **L. 2020:** (1) and (2) amended, (HB 20-1166), ch. 103, p. 396, § 4, effective April 1.

Cross references: In 2012, subsections (1) and (2) were amended by the "Save Colorado Jobs Act". For the short title and the legislative declaration, see sections 1 and 2 of chapter 61, Session Laws of Colorado 2012.

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PART 18
PUBLIC IMPROVEMENTS - SPECIAL DISTRICT CONTRACTS

32-1-1801. Short title.

This part 18 shall be known and may be cited as the "Integrated Delivery Method for Special District Public Improvements Act".

Source: L. 2007: Entire part added, p. 1818, § 4, effective August 3.

32-1-1802. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) It is the policy of the state of Colorado to encourage public contracting procedures that encourage competition, openness, and impartiality to the maximum extent possible.

(b) Competition exists not only in the costs of goods and services, but in the technical competence of the providers and suppliers in their ability to make timely completion and delivery and in the quality and performance of their products and services.

(c) Timely and effective completion of public projects can be achieved through a variety of methods when procuring goods and services for public projects.

(d) In enacting this part 18, the general assembly intends to establish for special districts and agencies of special districts an optional alternative public project delivery method.

Source: L. 2007: Entire part added, p. 1818, § 4, effective August 3.

32-1-1803. Definitions.

As used in this part 18, unless the context otherwise requires:

(1) "Agency" means any special district organized under this title or any other political subdivision that such district may create pursuant to state law that is a budgetary unit exercising construction contracting authority or discretion.

(2) "Contract" means any agreement for designing, building, altering, repairing, improving, demolishing, operating, maintaining, or financing a public project.

(3) "Cost-reimbursement contract" means a contract under which a participating entity is reimbursed for costs that are allowable and allocable in accordance with the contract terms and

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provisions of this part 18.

(4) "Integrated project delivery" or "IPD" means a project delivery method in which there is a contractual agreement between an agency and a single participating entity for the design, construction, alteration, operation, repair, improvement, demolition, maintenance, or financing, or any combination of these services, for a public project.

(5) "IPD contract" means a contract using an integrated project delivery method.

(6) "Participating entity" means a partnership, corporation, joint venture, unincorporated association, or other legal entity that provides appropriately licensed planning, architectural, engineering, development, construction, operating, or maintenance services as needed in connection with an IPD contract.

(7) "Public project" means any lands, buildings, structures, works, machinery, equipment, or facilities suitable for and intended for use as public property for public purposes or suitable for and intended for use in the promotion of the public health, public welfare, or public education, to the extent the boundaries of an agency and a school district are coterminous, or for the conservation of natural resources, including the planning of any such lands, buildings, improvements, structures, works, machinery, equipment, or facilities. "Public project" shall also include existing lands, buildings, improvements, structures, works, and facilities, as well as improvements, renovations, or additions to any such lands, buildings, improvements, structures, works, or facilities, and any operation or maintenance programs for the operation and upkeep of such projects.

(8) "Public purposes" includes, but is not limited to, the supplying of public water services and facilities, public sewer services and facilities, and lands, buildings, structures, improvements, equipment, and any other services or facilities authorized under this article or for public education to the extent the boundaries of the agency and the school district are coterminous.

Source: L. 2007: Entire part added, p. 1819, § 4, effective August 3.

32-1-1804. Integrated project delivery contracts - authorization - effect of other laws.

(1) Notwithstanding any other provision of law, and without limiting or modifying any alternative for public contracting by an agency authorized by any other provision of law, any agency may award an IPD contract for a public project under the provisions of this part 18 upon the determination by such agency that integrated project delivery represents a timely or cost-effective alternative for a public project.

(2) Nothing in this part 18 shall be construed as exempting any agency or participating entity from applicable federal, state, or local laws, regulations, or ordinances governing labor relations,

professional licensing, public contracting, or other related laws, except to the extent that an exemption is created under such legal authority or is granted by necessary implication from such legal authority. Notwithstanding any other provision of law, the requirements of section 32-1-1001 (1)(d)(I) shall not apply to any agency awarding an IPD contract pursuant to this part 18. Notwithstanding any other provision of law, the definitions contained in section 7-45-102, C.R.S., shall not apply to a project undertaken pursuant to this title.

Source: L. 2007: Entire part added, p. 1820, § 4, effective August 3.

32-1-1805. Integrated project delivery contracting process - prequalification of participating entities - apprentice training.

(1) An agency may prequalify participating entities for an IPD contract by publication of notice of its request for qualifications prior to the date set forth in the notice. A request for qualifications may contain the following elements and such additional information as may be requested by the agency:

(a) A general description of the proposed public project;

(b) Relevant budget considerations;

(c) Requirements of the participating entity, including:

(I) If the participating entity is a partnership, limited partnership, limited liability company, joint venture, or other association, a listing of all of the partners, general partners, members, joint venturers, or association members known at the time of submission of qualifications;

(II) Evidence that the participating entity, or the constituent entities or members thereof, has completed or has demonstrated the experience, competency, capability, and capacity, financial and otherwise, to complete projects of similar size, scope, or complexity;

(III) Evidence that the proposed personnel of the participating entity have sufficient experience and training to completely manage and complete the proposed public project; and

(IV) Evidence of all applicable licenses, registrations, and credentials required to provide the proposed services for the public project, including but not limited to information on any revocation or suspension of any such license, registration, or credential.

(d) The criteria for prequalification.

(2) From the participating entities responding to the request for qualifications, the agency shall prepare and announce a short list of participating entities that it determines to be most qualified to receive a request for proposal.

(3) Where an apprentice program as defined in section 8-15.7-101 (4) or certified by the

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office of apprenticeship in the employment and training administration in the United States department of labor exists in a county in which all or any portion of the special district is located, or a comparable program for the training of apprentices is available in such county:

(a) Each participating entity shall demonstrate to the agency that it has access to either the certified program or a comparable alternative; and

(b) Each participating entity shall demonstrate that each of its subcontractors, at any tier, selected to perform work under a contract with a value of two hundred fifty thousand dollars or more has access to either the certified program or a comparable alternative.

Source: L. 2007: Entire part added, p. 1820, § 4, effective August 3. **L. 2021:** IP(3) amended, (SB 21-1007), ch. 309, p. 1894, § 15, effective July 1.

32-1-1806. Requests for proposals - evaluation and award of integrated project delivery contracts.

(1) An agency shall prepare and, where it has not published a notice of request for qualifications pursuant to section 32-1-1805 (1), publish a notice of request for proposals for each IPD contract that may contain the following elements and such other elements as may be requested by the agency:

(a) The procedures to be followed for submitting proposals;

(b) The criteria for evaluation of a proposal, which criteria may provide for selection of a proposal on a basis other than solely the lowest costs estimates submitted;

(c) The procedures for making awards;

(d) Required performance standards as defined by the participating entity;

(e) A description of the drawings, specifications, or other submittals to be provided with the proposal, with guidance as to the form and the acceptable level of completion of the drawings, specifications, or submittals;

(f) Relevant budget considerations or, for an IPD contract that includes operation or maintenance services, the life-cycle cost analysis for the contract;

(g) The proposed project scheduling; and

(h) The stipend, if any, to be paid to participating entities responding to the request for proposals who appear on the agency's short list pursuant to section 32-1-1805 (2) but whose proposals are not selected for award of the IPD contract.

(2) After obtaining and evaluating proposals according to the criteria and procedures set forth

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in the request for proposals in accordance with the requirements of subsection (1) of this section, an agency may accept the proposal that, in its estimation, represents the best value to the agency. Acceptance of a proposal shall be by written notice to the participating entity that submitted the accepted proposal.

(3) With respect to performance under each IPD contract, the participating entity shall comply with all laws applicable to public projects.

(4) Notwithstanding any other provision of law, a participating entity selected for award of an IPD contract is not required to be licensed or registered to provide professional services as defined in section 24-30-1402 (6), C.R.S., if the person or firm actually performing any such professional services on behalf of the participating entity is appropriately licensed or registered and if the participating entity otherwise complies with applicable state licensing laws and requirements related to such professional services.

Source: L. 2007: Entire part added, p. 1821, § 4, effective August 3.

32-1-1807. Supplemental provisions.

The governing body of an agency may establish supplemental provisions that are designed to implement the provisions of this part 18.

Source: L. 2007: Entire part added, p. 1822, § 4, effective August 3.

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ARTICLE 12
OATHS AND AFFIRMATIONS

Section

24-12-101. Form of oath or affirmation for public office - requirements for oath or affirmation.

(1) When a person is required to take an oath or affirmation before the person enters upon the discharge of a public office or position, the form of the oath or affirmation is as follows:

```
I [name], do [select swear, affirm, or swear by the everliving God] that I will
support the constitution of the United States, the constitution of the state of
Colorado, and the laws of the state of Colorado, and will faithfully perform the
duties of the office of [name of office or position] upon which I am about to enter to
the best of my ability.
If choosing to swear an oath, the person swearing shall do so with an uplifted hand.
```

(2) The oath or affirmation must be:

(a) In writing and signed by the person taking the oath or affirmation;

(b) Administered as provided in section 24-12-103; and

(c) Taken, signed, administered, and filed as specified in subsection (3) of this section before the person enters upon the public office or position.

(3) Officers of the executive department, judges of the supreme and subsidiary courts, and district attorneys shall file their oaths or affirmations of office with the secretary of state. Every other person required by law to file an oath or affirmation of office shall file with the county clerk of the county wherein the person was elected or appointed.

Source: R.S. p. 482, § 1. **G.L.** § 1925. **G.S.** § 2471. **R.S. 08:** § 4669. **C.L.** § 7958. **CSA:** C. 115, § 1. **CRS 53:** § 98-1-1. **C.R.S. 1963:** § 98-1-1. **L. 2018:** Entire section amended, (HB

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18-1138), ch. 88, p. 691, § 2, effective August 8; (1) amended, (SB 18-242), ch.355, p. 2115, § 1, effective August 8.

Cross references: (1) For constitutional requirements of oaths, see §§ 8 and 9 of art. XII, Colo. Const.

(2) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

ANNOTATION

Law reviews. For article, "Fearing Hell as Essential to Validity of Affidavit", see 18 Dicta 144 (1941).

Unlikely that notary public invokes "everliving God" to witness truth of statement. Under most office arrangements where the handling and notarization of papers are routine and perfunctory, as where the notary public is familiar with a signature, it is unlikely that "the everliving God" is invoked to witness the truth of a statement. Rogers v. People, 161 Colo. 317, 422 P.2d 377 (1966).

24-12-102. Form of oaths or affirmations for purposes other than public office.

Whenever any person is required to take or subscribe an oath, and in all cases where an oath is to be administered upon any lawful occasion, and the person has conscientious scruples against taking an oath, the person is permitted to make a solemn affirmation in lieu of an oath. Whenever any person is required to take an oath or affirmation, other than an oath for public office or position in accordance with section 24-12-101, the person shall take or subscribe the oath or affirmation in the manner specified in the particular law that imposes the requirement.

Source: R.S. p. 482, § 2. **G.L.** § 1926. **G.S.** § 2472. **R.S. 08:** § 4670. **C.L.** § 7959. **CSA:** C. 115, § 2. **CRS 53:** § 98-1-2. **C.R.S. 1963:** § 98-1-2. **L. 72:** p. 563, § 33. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 692, § 3, effective August 8.

Cross references: (1) For perjury in the first degree, see § 18-8-502.

(2) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

ANNOTATION

It is not unconstitutional to require an oath or affirmation of jurors. People v. Velarde, 616 P.2d 104 (Colo. 1980).

24-12-103. Who may administer oaths or affirmations.

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All courts in this state and each judge, justice, magistrate, referee, clerk, and deputy clerk thereof; court reporters who hold the registered professional reporter certification or higher; members and referees of the division of labor standards and statistics; members of the public utilities commission; and notaries public have power to administer oaths or affirmations to witnesses and others concerning any matter, thing, process, or proceeding pending, commenced, or to be commenced before them respectively. The courts, judges, magistrates, referees, clerks, and deputy clerks within their respective districts or counties; court reporters who hold the registered professional reporter certification or higher; a person designated by the governing body, or any officer thereof; and notaries public within any county of this state have the power to administer all oaths or affirmations of office and other oaths or affirmations required to be taken by any person upon any lawful occasion and to take affidavits and depositions concerning any matter or thing, process, or proceeding pending, commenced, or to be commenced in any court or on any occasion an affidavit or a deposition is authorized or by law required to be taken.

Source: R.S. p. 482, § 3. **G.L.** § 1927. **G.S.** § 2473. **R.S. 08:** § 4671. **C.L.** § 7960. **CSA:** C. 115, § 3. **L. 45:** p. 495, § 1. **CRS 53:** § 98-1-3. **C.R.S. 1963:** § 98-1-3. **L. 64:** p. 293, § 235. **L. 65:** p. 893, § 1. **L. 91:** Entire section amended, p. 365, § 38, effective April 9. **L. 2016:** Entire section amended, (HB 16-1323), ch. 131, p. 380, § 17, effective August 10. **L. 2018:** Entire section amended, (HB 18-1138), ch. 88, p. 692, § 4, effective August 8. **L. 2022:** Entire section amended, (SB 22-020), ch. 57, p. 263, § 1, effective March 30.

Cross references: (1) For the authority of county clerks to administer oaths, see § 30-10-416; for the power of the public utilities commission to administer oaths, see § 40-6-103 (1).

(2) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

ANNOTATION

There is no affidavit unless an authorized official administers the oath. Zimmerman v. Indus. Comm'n, 108 Colo. 552, 120 P.2d 636 (1941).

Those officials empowered to administer oaths are enumerated in this section. Zimmerman v. Indus. Comm'n, 108 Colo. 552, 120 P.2d 636 (1941).

However, the secretary of the industrial commission is not mentioned therein, and there is no specific statutory provision investing this officer with such power. Zimmerman v. Indus. Comm'n, 108 Colo. 552, 120 P.2d 636 (1941) (decided prior to the abolition of the industrial commission in 1986).

Function of notary public is to take affidavits and depositions. Affidavits and depositions, when made, are legal papers, and the taking of them has been recognized as the function of a notary public from the earliest times. People ex rel. Attorney Gen. v. Wicks, 101 Colo. 397, 74 P.2d 665 (1937).

Thus, notary public authorized to administer oath to surety on bail bond. The affidavit of a surety on a bail bond as to his ownership of property, or other qualifications as a surety, is one

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"authorized or by law required to be taken", within the meaning of this section, and under this section a notary public has the authority to administer the oath. People v. Pollock, 65 Colo. 275, 176 P. 329 (1918).

24-12-104. Officers in armed forces empowered to perform notarial acts.

(1) In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed before or by any commissioned officer in active service of the armed forces of the United States or any such officer performing inactive-duty training with the equivalent rank of second lieutenant or higher in any component part of the armed forces of the United States, by or for any person who is a member of the armed forces of the United States, or is serving as a merchant seaman outside the limits of the United States included within the fifty states and the District of Columbia, or is outside said limits by permission, assignment, or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

(2) Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, whenever made or taken, are hereby declared legal, valid, and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

(3) In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate indorsed upon or attached to the instrument or document that shows the date of the notarial act and that states, in substance, that the person appearing before the officer acknowledged the instrument as his or her act or made or signed the instrument or document under oath or affirmation shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(4) If the signature, rank, and branch of service or subdivision thereof of any such commissioned officer appears upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required, and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section.

(5) If any instrument is acknowledged substantially as provided in this section, whether such acknowledgment has been taken before or after February 27, 1943, such acknowledgment shall

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be prima facie evidence of proper execution of such instrument and shall carry with it the presumptions provided for by section 38-35-101, C.R.S.

Source: L. 43: p. 218, § 2. **CSA:** C. 115, § 3A. **L. 47:** p. 355, § 3A. **CRS 53:** § 98-1-4. **C.R.S. 1963:** § 98-1-4. **L. 91:** (1) amended, p. 1379, § 1, effective May 18. **L. 2018:** (3) amended, (HB 18-1138), ch. 88, p. 693, § 5, effective August 8.

Cross references: (1) For acknowledgments by persons in the armed forces, see § 38-30-127.

(2) For the legislative declaration in HB 18-1138, see section 1 of chapter 88, Session Laws of Colorado 2018.

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Law reviews. For article, "Curative Statutes of Colorado Respecting Titles to Real Estate", see 26 Dicta 281 (1949).

24-12-105. Appointees of officers of home rule cities and city and counties.

In all home rule cities and city and counties, the charters of which provide that officers, boards, or commissions named therein shall perform the acts and duties required of county officers by the state constitution or by general law, any deputy, employee, or appointee of such officer, board, or commission may administer any oath or affirmation which, by the state constitution or general law, might be administered by the county officer whose duties are performed by such officer, board, or commission making such appointment or employing such deputy, so long as such deputy, employee, or appointee is employed in such capacity.

Source: L. 35: p. 1113, § 1. **CSA:** C. 115, § 4. **CRS 53:** § 98-1-5. **C.R.S. 1963:** § 98-1-5.

Cross references: For constitutional provisions on home rule cities and towns, see art. XX, Colo. Const.

24-12-106. False swearing or affirming, perjury.

All oaths and affirmations, affidavits, and depositions administered or taken shall subject any person who swears or affirms falsely and willfully, in the matter material to any issue or point in question, to the penalties inflicted by law on persons guilty of perjury in the first degree.

Source: R.S. p. 483, § 5. **G.L.** § 1929. **G.S.** § 2475. **R.S. 08:** § 4673. **C.L.** § 7961. **CSA:** C. 115, § 5. **CRS 53:** § 98-1-6. **C.R.S. 1963:** § 98-1-6. **L. 72:** p. 563, § 34.

Cross references: For perjury in the first degree, see § 18-8-502.

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Three elements are necessary to complete the crime of perjury: (1) Signing a false statement; (2) wilfully and corruptly taking the oath or affirming the same; and (3) making an oath before authorized officer in a manner prescribed by statute. Rogers v. People, 161 Colo. 317, 422 P.2d 377 (1966).

Surety making false affidavit on financial condition guilty of perjury. Where one offers himself as surety in bail bond and makes, before notary public, false affidavit as to his financial condition, he is guilty of perjury. People v. Pollock, 65 Colo. 275, 176 P. 329 (1918).

In prosecutions for perjury, the uncorroborated oath of one witness is not enough to establish the falsity of the testimony of the accused. Rather, the offense must be proved by the testimony of two witnesses, or the testimony of one witness and by other independent and corroborating circumstances which are deemed of equal weight of the testimony of another witness. Moreover, the corroboration of a single witness for the prosecution must contradict in definite and positive terms the statement of the accused. Lindsay v. People, 119 Colo. 438, 204 P.2d 878 (1949).

24-12-107. Oaths taken out of state.

All oaths and affirmations required or authorized to be taken by any statute of this state, when the person required to make the same resides out of or is absent from this state, may be made before and administered by any notary public or clerk of any court of record of the state wherein such person may be, such notary or clerk certifying the same under his notarial seal or the seal of such court.

Source: R.S. p. 483, § 6. **G.L.** § 1930. **G.S.** § 2476. **R.S. 08:** § 4674. **C.L.** § 7962. **CSA:** C. 115, § 6. **CRS 53:** § 98-1-7. **C.R.S. 1963:** § 98-1-7.

24-12-108. Tax returns - applications for refunds.

Any person required to make any return or any application for refund or protest against any deficiency assessment involving any tax imposed by the sales, use, income, motor fuel, and motor vehicle tax laws under oath or affirmation, in lieu of such oath or affirmation, may make a written verification or declaration that it is true and correct and that it is made under the penalties of perjury in the first degree, and the same is valid and complete without any attestation before a notary public or other officer if the signature thereto is witnessed by a legally competent person.

Source: L. 43: p. 445, § 1. **CSA:** C. 115, § 7. **CRS 53:** § 98-1-8. **C.R.S. 1963:** § 98-1-8. **L. 72:** p. 563, § 35.

Cross references: For perjury in the first degree, see § 18-8-502.

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Section 20. The Taxpayer's Bill of Rights.

(1) General provisions. This section takes effect December 31, 1992 or as stated. Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four full fiscal years before a suit is filed shall be refunded with 10% annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, (4)(a) and (7) shall be suspended to provide for the deficiency.

(2) Term definitions. Within this section:

(a) "Ballot issue" means a non-recall petition or referred measure in an election.

(b) "District" means the state or any local government, excluding enterprises.

(c) "Emergency" excludes economic conditions, revenue shortfalls, or district salary or fringe benefit increases.

(d) "Enterprise" means 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.

(e) "Fiscal year spending" means all district expenditures and reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

(f) "Inflation" means the percentage change in the United States Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index.

(g) "Local growth" for a non-school district means a net percentage change in actual value of all real property in a district from construction of taxable real property improvements, minus destruction of similar improvements, and additions to, minus deletions from, taxable real property. For a school district, it means the percentage change in its student enrollment.

(3) Election provisions. (a) Ballot issues shall be decided in a state general election, biennial

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local district election, or on the first Tuesday in November of odd-numbered years. Except for petitions, bonded debt, or charter or constitutional provisions, districts may consolidate ballot issues and voters may approve a delay of up to four years in voting on ballot issues. District actions taken during such a delay shall not extend beyond that period.

(b) At least 30 days before a ballot issue election, districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to "All Registered Voters" at each address of one or more active registered electors. The districts may coordinate the mailing required by this paragraph (b) with the distribution of the ballot information booklet required by section 1 (7.5) of article V of this constitution in order to save mailing costs. Titles shall have this order of preference: **"NOTICE OF ELECTION TO INCREASE TAXES/TO INCREASE DEBT/ON A CITIZEN PETITION/ON A REFERRED MEASURE."** Except for district voter-approved additions, notices shall include only:

(i) The election date, hours, ballot title, text, and local election office address and telephone number.

(ii) For proposed district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years, and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries, up to 500 words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. The provisions of this subparagraph (v) do not apply to a statewide ballot issue, which is subject to the provisions of section 1 (7.5) of article V of this constitution.

(c) Except by later voter approval, if a tax increase or fiscal year spending exceeds any estimate in (b)(iii) for the same fiscal year, the tax increase is thereafter reduced up to 100% in proportion to the combined dollar excess, and the combined excess revenue refunded in the next fiscal year. District bonded debt shall not issue on terms that could exceed its share of its maximum repayment costs in (b)(iv). Ballot titles for tax or bonded debt increases shall begin, **"SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year**

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dollar increase) ANNUALLY...?" or "SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost), ...?"

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.

(b) Except for refinancing district bonded debt at a lower interest rate or adding new employees to existing district pension plans, creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years.

(5) Emergency reserves. To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 3% or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

(6) Emergency taxes. This subsection grants no new taxing power. Emergency property taxes are prohibited. Emergency tax revenue is excluded for purposes of (3)(c) and (7), even if later ratified by voters. Emergency taxes shall also meet all of the following conditions:

(a) A 2/3 majority of the members of each house of the general assembly or of a local district board declares the emergency and imposes the tax by separate recorded roll call votes.

(b) Emergency tax revenue shall be spent only after emergency reserves are depleted, and shall be refunded within 180 days after the emergency ends if not spent on the emergency.

(c) A tax not approved on the next election date 60 days or more after the declaration shall end with that election month.

(7) Spending limits. (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) The maximum annual percentage change in each local district's fiscal year spending equals inflation in the prior calendar year plus annual local growth, adjusted for revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.

(c) The maximum annual percentage change in each district's property tax revenue equals inflation in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by voters after 1991 and (8)(b) and (9) reductions.

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(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3)(c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.

(8) Revenue limits. (a) New or increased transfer tax rates on real property are prohibited. No new state real property tax or local district income tax shall be imposed. Neither an income tax rate increase nor a new state definition of taxable income shall apply before the next tax year. Any income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate, excluding refund tax credits or voter-approved tax credits, with no added tax or surcharge.

(b) Each district may enact cumulative uniform exemptions and credits to reduce or end business personal property taxes.

(c) Regardless of reassessment frequency, valuation notices shall be mailed annually and may be appealed annually, with no presumption in favor of any pending valuation. Past or future sales by a lender or government shall also be considered as comparable market sales and their sales prices kept as public records. Actual value shall be stated on all property tax bills and valuation notices and, for residential real property, determined solely by the market approach to appraisal.

(9) State mandates. Except for public education through grade 12 or as required of a local district by federal law, a local district may reduce or end its subsidy to any program delegated to it by the general assembly for administration. For current programs, the state may require 90 days notice and that the adjustment occur in a maximum of three equal annual installments.

Source: Initiated 92: Entire section added, effective December 31, 1992, see **L. 93,** p. 2165. **L. 94:** (3)(b)(v) amended, p. 2851, effective upon proclamation of the Governor, **L. 95,** p. 1431, January 19, 1995. **L. 95:** IP(3)(b) and (3)(b)(v) amended, p. 1425, effective upon proclamation of the Governor, **L. 97,** p. 2393, December 26, 1996.

Editor's note: (1) Prior to the TABOR initiative in 1992, this section was originally enacted in 1972 and contained provisions relating to the 1976 Winter Olympics and was repealed, effective January 3, 1989. (See L. 1989, p. 1657.)

(2) (a) The Governor's proclamation date for the 1992 initiated measure (TABOR) was January 14, 1993.

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(b) Subsection (4) of this section provides that the provisions of this section apply to required elections of state and local governments conducted on or after November 4, 1992.

(3) The consumer price index for Denver-Boulder referenced in subsection (2)(f) became the consumer price index for Lakewood-Aurora in 2018.

Cross references: For statutory provisions implementing this section, see article 77 of title 24 (state fiscal policies); §§ 1-1-102, 1-40-125, 1-41-101 to 1-41-103, 29-2-102, and 32-1-803.5 (elections); §§ 29-1-304.7 and 29-1-304.8 (turnback of programs delegated to local governments by the general assembly); §§ 43-1-112.5, 43-1-113, 43-4-611, 43-4-612, 43-4-705, 43-4-707, and 43-10-109 (department of transportation revenue and spending limits); §§ 23-1-104 and 23-1-105 (higher education revenue and spending limits); §§ 24-30-202, 24-82-703, 24-82-705, and 24-82-801 (multiple fiscal-year obligations); §§ 8-46-101, 8-46-202, 8-77-101, 24-75-302, and 43-4-201 (provisions relating to individual funds and programs); and § 39-5-121 (property tax valuation notices); and, concerning the establishment of enterprises, §§ 23-1-106, 23-3.1-103.5, 23-3.1-104.5, 23-5-101.5, 23-5-101.7, 23-5-102, 23-5-103, 23-70-107, 23-70-108, and 23-70-112 (higher education, auxiliary facilities), part 2 of article 35 of title 24 (state lottery), part 3 of article 3 of title 25 (county hospitals), §§ 26-12-110 and 26-12-113 (state nursing homes), article 45.1 of title 37 (water activities), § 43-4-502 (public highway authorities), and § 43-4-805 (state bridge enterprise).

ANNOTATIONS

Analysis

I. GENERAL CONSIDERATION.

Law reviews. For article, "Amendment One: Government by Plebiscite", see 22 Colo. Law. 293 (1993). For article, "Use of the Nonprofit Supporting Foundation to Assist Governmental Districts After Amendment 1", see 22 Colo. Law. 685 (1993). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part I", see 27 Colo. Law. 55 (April 1998). For article, "Enterprises Under Article X, § 20 of the Colorado Constitution - Part II", see 27 Colo. Law. 65 (May 1998). For article, "Taming TABOR by Working from Within", see 32 Colo. Law. 101 (July 2003). For article, "The Colorado Constitution in the New Century", see 78 U. Colo. L. Rev. 1265 (2007). For comment, "Dismantling the Trojan Horse: Mesa County Board of County Commissioners v. State", see 82 U. Colo. L. Rev. 259 (2011). For article, "The Taxpayers Bill of Rights Twenty Years of Litigation", see 42 Colo. Law. 35 (Sept. 2013). For comment, "Restore the Republic: The Incompatibility Between the Taxpayer's Bill of Rights and the Guarantee Clause", see 87 U. Colo. L. Rev. 621 (2016).

Interpretation of a constitutional provision is a question of law and an appellate court is not required to accord deference to a trial court's ruling in that regard. Cerveny v. City of Wheat Ridge, 888

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P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996).

In interpreting a constitutional amendment that was adopted by popular vote, courts must determine what the people believed the language of the amendment meant when they voted it into law. To do so, courts must give the language the natural and popular meaning usually understood by the voters. Cerveny v. City of Wheat Ridge, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996); Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

In interpreting a constitutional provision, the court should ascertain and give effect to the intent of those who adopted it. In the case of this section, it is the court's responsibility to ensure that it gives effect to what the voters believed the amendment to mean when they accepted it as their fundamental law, considering the natural and popular meaning of the words used. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

A court will not assume that all legislative drafting principles apply when interpreting an initiated constitutional amendment but will apply generally accepted principles such as according words their plain or common meaning in order to enact the intent of the voter in the same manner as it would otherwise seek to enact the intent of the legislature. Bruce v. City of Colo. Springs, 129 P.3d 988 (Colo. 2006).

The language in subsection (1) stating that the preferred interpretation of this section "shall reasonably restrain most the growth of government" is an interpretative guideline that a reviewing court may employ when it finds two separately plausible interpretations of the text of this section. It is not a refutation of the beyond a reasonable doubt standard. As the presumption of constitutionality applies to a statute challenged under this section, the beyond a reasonable doubt showing is necessary to overcome that presumption. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009); TABOR Found. v. Reg'l Transp. Dist., 2016 COA 102, 417 P.3d 850, aff'd on other grounds, 2018 CO 29, 416 P.3d 101.

Where multiple interpretations of a provision of this section are equally supported by the text of that section, a court should choose that interpretation which it concludes would create the greatest restraint on the growth of government; however, the proponent of an interpretation has the burden of establishing that its proposed construction of this section would reasonably restrain the growth of government more than any other competing interpretation. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995); Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995); HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 (Colo. App. 2008).

A court should require a significant financial burden on the state only if the text of this section leaves no other choice. Courts have consistently rejected readings that would hinder basic government functions or cripple the government's ability to provide services. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

Amendment's objective is to prevent governmental entities from enacting taxing and spending increases above its limits without voter approval. Campbell v. Orchard Mesa Irr. Dist., 972 P.2d 1037 (Colo. 1998).

This section requires voter approval for certain state and local government tax increases and restricts property, income, and other taxes. Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

And acts to limit the discretion of government officials to take certain actions pertaining to taxing, revenue, and spending in the absence of voter approval. Prop. Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs, 956 P.2d 1277 (Colo. App. 1998).

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This section operates to impose a limitation on the power of the people's elected representatives, and while this section circumscribes the revenue, spending, and debt powers of state and local governments, creating a series of procedural requirements, it does not create any fundamental rights. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Districts may seek present authorization for future tax rate increases where such rate increases may be necessary to repay a specific, voter-approved debt. Any rate change ultimately implemented by a district pursuant to the "without limitation as to rate" clause in the ballot title must be consistent with the district's state estimate of the final fiscal year dollar amount of the increase. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

This section and article XXVII of the Colorado Constitution are not in irreconcilable, material, and direct conflict, since this section does not authorize what article XXVII forbids or forbid what article XXVII authorizes. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Since the inclusion of all net lottery proceeds in the calculation of state fiscal year spending creates an implicit conflict between this section and article XXVII, legislation exempting net lottery proceeds dedicated by article XXVII to great outdoors Colorado purposes from this section and subjecting such proceeds dedicated to the capital construction fund and the excess that spill over into the general fund to this section represented a reasonable resolution of that implicit conflict. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section and § 9 of article XVIII of the Colorado Constitution are not in direct conflict. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section and § 3 of this article reconciled. In order to reconcile the requirement of subsection (8)(c) of this section that residential property be valued "solely by the market approach to appraisal" with the equalization requirement of article X, § 3, the actual value of residential property must be determined using means and methods applied impartially to all the members of each class. Podoll v. Arapahoe County Bd. of Equaliz., 920 P.2d 861 (Colo. App. 1995), rev'd on other grounds, 935 P.2d 14 (Colo. 1997).

This section does not conflict with § 1-11-203.5, which governs ballot title contests. Since the limited period for filing ballot title contests specified in § 1-11-203.5 also is not "manifestly so limited as to amount to a denial of justice", § 1-11-203.5 is constitutional. Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

Amendment relates back. Although under art. V, § 1(4), this section took effect January 14, 1993, once effective, its terms could and did relate back to conduct occurring the day after the 1992 election. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Dispute under election provisions reviewed under a "substantial compliance" standard. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

Substantial compliance found. District in mail ballot election found to have substantially complied with section when purposes of the ballot disclosure provisions are not undermined and all required information was in the election notices if not the ballot title. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

Voter approval of dollar amounts not required. This section does not require voter approval of a dollar amount when the revenue change is not a district tax increase. City of Aurora v. Acosta, 892 P.2d 264 (Colo. 1995).

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The Taxpayer's Bill of Rights does not grant governmental entities the right to file enforcement suits or class action suits. Boulder County Bd. of Comm'rs v. City of Broomfield, 7 P.3d 1033 (Colo. App. 1999).

Plaintiff had standing, as expressly provided under this section, to bring action as an individual taxpayer to determine whether E-470 authority was subject to this section's regulation. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Petitioners have taxpayer standing to challenge the constitutionality of transfers of money from special funds to the general fund and the concomitant expenditure of that money to defray general governmental expenses. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

The four-year time limitation for individual or class action suits under this section applies to enforcement of the specific requirements of this constitutional provision, but does not affect the statute of limitations set forth in the statutory provisions regarding taxes that were levied erroneously or illegally. Prop. Tax Adjustment Specialists, Inc. v. Mesa County Bd. of Comm'rs, 956 P.2d 1277 (Colo. App. 1998).

Provisions for collecting and spending revenues entered into by the E-470 public highway authority were not subject to the election provisions of this section where bond contracts entered into prior to passage of this section required that the revenues would be received and spent by the highway authority for the purpose of operating the highway and repaying the indebtedness. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

The phrase "multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever" in § 20 of article X is necessarily broader than the phrase "debt by loan in any form" as defined by this section. Sub. of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999) (overruling Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994)).

However, the scope of the phrase is not without bounds. The voters could not have intended an absurd result such as requiring voter approval for a multiple year lease-purchase agreement for equipment such as copy machines or computers. Sub. of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

County's equipment lease-purchase agreement did not create any multiple-fiscal year direct or indirect district debt or other financial obligation under this section where the county was free to terminate the agreement without penalty by failing to appropriate funds to pay the rent in any lease year. Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994).

This section does not supersede prior case authority permitting lease purchase agreements. This section is analyzed in light of the existing well-established constitutional law in existence at the time of this section's adoption. Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994).

Tax status. Whether the interest income derived from a county's equipment lease agreement or any similar transaction is tax free has no impact on the court's interpretation of the Colorado Constitution. Boulder v. Dougherty, Dawkins, 890 P.2d 199 (Colo. App. 1994).

This section creates a series of procedural requirements and nothing more. This section circumscribes the revenue, spending, and debt powers of state and local governments, it does not create any fundamental rights. With respect to the attorney fee provision of subsection (1), a holding that a victorious plaintiff must recover attorney fees as of right is antithetical to the overarching goal of the section to limit government spending. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

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This section does not provide an exemption from any obligation under the Colorado Open Records Act. Whether an institution is an "enterprise" does not have a bearing on whether it is free from the requirements of the Act. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

Charges imposed on cable subscribers and for city street light service are fees, not taxes, and, therefore, are not subject to the ballot title and information and voter approval requirements of this section. Bruce v. City of Colo. Springs, 131 P.3d 1187 (Colo. App. 2005).

Passage of this section directly modified the powers of home rule cities, and a home rule city's ordinance is invalid to the extent that it conflicts with this section's requirements. HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 Colo. App. 2008).

One-sentence initiative to repeal this section in full has a single subject. The initiative meets all of the requirements of a single subject and, on its face, reflects a single subject. While this section itself is arguably a multi-subject provision, statements in prior state supreme court cases that an initiative that repeals a multi-subject constitutional provision includes multiple subjects were dicta and are not binding precedent. In re Ballot Title 2019-2020 No. 3, 2019 CO 57, 442 P.3d 867 (disapproving In re Proposed Initiative 1996-4, 916 P.2d 528 (Colo. 1996); Matter of Title, Ballot Title, & Sub. Cl., & Summary for 1999-2000 No. 104, 987 P.2d 249 (Colo. 1999); and In re Ballot Title 2013-14 No. 76, 2014 CO 52, 333 P.3d 76).

Special district bond proceeds not "revenue". Proceeds of special district bonds, even when misappropriated, are not "revenue" for purposes of the subsection (1) requirement that "[r]evenue collected, kept, or spent illegally" be refunded. Such proceeds are borrowed funds, not income, that are lent to a district by bond purchasers rather than being collected from district property owners. Landmark Towers Ass'n v. UMB Bank, 2018 COA 100, 436 P.3d 1139.

Foundations and members of foundations lacked standing to contest the constitutionality of statutes that created a hospital provider fee program and a successor health care affordability and sustainability fee program as violative of this section and on other grounds. The members lacked taxpayer standing generally and under the citizen-suit provision of this section because hospitals, not taxpayers, made required payments to the programs, and there was therefore no clear nexus between their taxpayer status and the fees. The members lacked individual standing because the programs affected health care consumers only indirectly, and the members therefore suffered no direct and individualized injury. The foundations lacked associational standing because the members did not otherwise have standing to sue in their own right. TABOR Found. v. Dept. of Health Care, 2020 COA 156, 487 P.3d 1277.

II. DEFINITIONS.

E-470 authority is a district subject to the voter approval provisions of this section since the power to unilaterally impose taxes, with no direct relation to services provided, is inconsistent with the characteristics of a business as the term is commonly used, nor is it consistent with the definition of "enterprise" read as a whole. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

The statewide bridge enterprise is exempt from the requirements of this section. It is an exempt enterprise as defined in subsection (2)(a) because it is a government-owned business, the bridge safety surcharge that it imposes is a fee, not a tax, and the federal funds and designated bridges that it receives are not grants from the state or any local government. Consequently, it did not violate this section when it imposed a bridge safety surcharge and issued revenue bonds without prior voter approval. TABOR Found. v. Colo. Bridge Enter., 2014 COA 106, 353 P.3d 896.

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The attorney fee provisions of this section authorize an award of fees but do not require such an award. The fee-shifting phrase "successful plaintiffs are allowed costs and reasonable attorney fees" set forth in subsection (1) is plain and unambiguous. It allows a court to make an award of attorney fees but does not require the court to do so. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

In assessing whether to award attorney fees under this section, the court must consider a number of factors and reach its conclusion based on the totality of the circumstances. Most importantly, the court must evaluate the significance of the litigation, and its outcome, in furthering the goals of this section. This evaluation must also include the nature of the claims raised, the significance of the issues on which the plaintiff prevailed in comparison to the litigation as a whole, the quantum of financial risk undertaken by the plaintiff, and the factors the court would weigh in determining what "reasonable" attorney fees would be. The court may also consider the nature of the fee agreement between the plaintiff and plaintiff's attorney. Where the plaintiff has had only partial success, the court must exclude the time and effort expended on losing issues if it chooses to award attorney fees. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

The appropriateness of awarding attorney fees is diminished where the named plaintiff bears no risk and the benefit of an award of attorney fees will accrue to others. In addition, deficiencies in the attorney fee agreement, including deviation from rule requirements or professional standards, may adversely impact the quality of the representation or cause the court to find that the attorney's conduct does not merit an award regardless of a successful outcome. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

The fact that the plaintiffs are not the real parties in interest does not necessarily preclude an award of attorney fees under this section. The fact that the real parties in interest were not parties to the litigation does not disqualify nominal plaintiffs from being considered successful plaintiffs who are eligible for attorney fees under this section. City of Wheat Ridge v. Cerveny, 913 P.2d 1110 (Colo. 1996).

The amendment's provision for attorney fees and costs in favor of successful plaintiffs does not contravene the constitutional requirement for equal protection by denying similar treatment to successful governmental defendants. The scheme set out in the amendment bears a rational relationship to a permissible governmental purpose; the facilitation of taxpayer suits to enforce compliance with the purpose of restraining governmental growth. Cerveny v. City of Wheat Ridge, 888 P.2d 339 (Colo. App. 1994), rev'd on other grounds, 913 P.2d 1110 (Colo. 1996).

The sale of lottery tickets does not constitute a "property sale" under this section. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

This section does not use the terms "gift" and "grant" synonymously. "Gifts" are exempt from fiscal year spending; however, if an entity receives more than ten percent of its revenues in "grants," the entity is disqualified as an enterprise. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Net lottery proceeds are not to be excluded from state fiscal year spending as "gifts". Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

It is erroneous to exclude net lottery proceeds from the purview of this section on the basis of a characterization of the great outdoors Colorado trust fund board created under article XXVII of the Colorado Constitution as a "district" or "non-district". Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

By its terms, this section also limits the growth of state revenues, usually met by tax

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increases, by restricting the increase of fiscal year spending to the rate of inflation plus population increase, unless voter approval for an increase in spending is obtained. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

If the revenues of the state or a local government increase beyond the allowed limits on fiscal year spending, any excess above the allowed limit or voter-approved increase must be refunded to the taxpayers. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Board of county commissioners was acting pursuant to express grants of constitutional and statutory authority in creating the Eagle county air terminal corporation as an enterprise and empowering it to act on county's behalf in constructing and operating a new commercial passenger terminal. Bd. of Comm'rs v. Fixed Base Operators, 939 P.2d 464 (Colo. App. 1997).

Trial court properly determined that the Eagle county air terminal corporation was an enterprise rather than a district. Corporation was a government-owned and controlled non-profit corporation authorized to issue its own revenue bonds and it received no revenue in the form of grants from state and local governments. Bd. of Comm'rs v. Fixed Base Operators, 939 P.2d 464 (Colo. App. 1997).

An irrigation district is not a local government within the meaning of the amendment's taxing and spending election requirements. The private character of a 1921 Act irrigation district differs in essential respects from that of a public governmental entity exercising taxing authority contemplated by the amendment. An irrigation district exists to serve the interests of landowners not the general public. Rather than being a local government agency, a 1921 Act irrigation district is a public corporation endowed by the state with the powers necessary to perform its predominately private objective. Campbell v. Orchard Mesa Irr. Dist., 972 P.2d 1037 (Colo. 1998).

Trial court properly concluded that urban renewal authority is not subject to the requirements of this section. Urban renewal authority at issue has no authority to levy taxes or assessments of any kind and there is no provision for authority to conduct elections of any kind. Based upon these factors, urban renewal authority is not a "local government" and, therefore, not a "district" within the meaning of this section. Olson v. City of Golden, 53 P.3d 747 (Colo. App. 2002).

III. REQUIREMENT OF ADVANCE VOTER APPROVAL.

Definition of "ballot issue," for purposes of subsection (3)(a) regarding scheduling of elections, is limited to fiscal matters. Zaner v. City of Brighton, 899 P.2d 263 (Colo. App. 1994), aff'd, 917 P.2d 280 (Colo. 1996).

Language in subsection (3)(a) that allows voters to "approve a delay of up to four years in voting on ballot issues" does not mean that voters' waiver of revenue and spending limits must be limited in duration to four years. Havens v. Bd. of County Comm'rs, 58 P.3d 1165 (Colo. App. 2002).

Eligible electors did not receive notice of the election as constitutionally required by subsection (3)(b). Landmark Towers Ass'n v. UMB Bank, 2016 COA 61, 436 P.3d 1126, rev'd on other grounds, 2017 CO 107, 408 P.3d 836.

A substantial compliance standard is the proper measure when reviewing claims brought to enforce the election provisions of this section. In determining whether a district has substantially complied with a particular provision of this section, courts should consider factors, including: (1) The extent of the district's noncompliance; (2) the purpose of the provision violated and whether the purpose is substantially achieved despite the district's noncompliance; and (3) whether it can reasonably be inferred that the district made a good faith effort to comply or whether the district's noncompliance is more

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properly viewed as the product of an intent to mislead the electorate. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995); Bruce v. City of Colo. Springs, 129 P.3d 988 (Colo. 2006).

A plaintiff suing under this section's enforcement clause need not set forth in the complaint facts showing that the claimed violations affected the election results. A requirement that a plaintiff allege facts that the election results would have been different had the claimed violations not occurred would make enforcement of the provisions of this section effectively impossible in most elections. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

The incurrence of a debt and the adoption of taxes as the means with which to repay that debt are properly viewed as a single subject when presented together in one ballot issue. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

Ballot title is not a ballot title for tax or bonded debt increases and the city is not required to begin the measure with the language "Shall city taxes be increased by up to 8 million dollars?". The primary purpose and effect of the measure is to grant a franchise to a public utility to furnish gas and electricity to the city and its residents, although the ballot title also seeks authorization for a contingent tax increase of up to $8,000,000 to be implemented only in the highly unlikely event that the city were unable to collect from the public utility. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

A ballot issue to extend an existing tax is not a tax increase for purposes of subsection (3)(c), and the title of such a ballot issue, therefore, need not include the mandatory language for ballot issues to increase taxes specified in subsection (3)(c). Bruce v. City of Colo. Springs, 129 P.3d 988 (Colo. 2006).

Ballot title violates subsection (3)(c) by failing to include an estimate of the full fiscal year dollar increase in ad valorem property taxes. All that is required is a good faith estimate of the dollar increase. To create an exemption from the requirements of subsection (3)(c) any time a district has difficulties estimating its proposed tax increases would undermine the primary purpose of the disclosure provisions of this section. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

A claim that a ballot issue proposed a "phased-in" tax increase and that a ballot title that disclosed only the first rather than the final full fiscal year dollar increase was, therefore, improper under subsection (3)(c) involved only the form and content of the ballot title, could be resolved by the type of summary adjudication contemplated by the applicable ballot title contest statute, and was subject to and time-barred by the statutory five-day filing limit set forth in § 1-11-203.5 (2). Cacioppo v. Eagle County Sch. Dist. RE-50J, 92 P.3d 453 (Colo. 2004).

The purpose of the disclosure requirements regarding the dollar estimate of a tax increase is to permit the voters to make informed choices at the ballot. That purpose was not substantially achieved in the case of the proposed ad valorem property tax increase because the ballot title failed to give any indication of the potential magnitude of the tax increase. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

The only portion of the ballot measure that should be invalidated for failure to provide estimate of the tax increase is the authorization for the city to increase ad valorem property taxes "in an amount sufficient to pay the principal and interest on" the open space bonds. The first portion of the measure, which authorizes the city to issue bonds, does not violate this section and need not be stricken from the measure. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

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Requirement in subsection (3)(b)(V) that election official summarize relevant written comments does not lend itself to imposing a requirement upon election officials to examine the motives or good faith of voters submitting the comments. Such an examination, moreover, would present significant freedom of speech concerns with respect to the voter's right to submit comments and could deprive the electorate of comments to make an intelligent decision on a proposal. The plaintiff, accordingly, was not entitled to a declaratory judgment. Gresh v. Balink, 148 P.3d 419 (Colo. App. 2006).

The calculation method employed to calculate fiscal year spending is not prohibited by the plain language of this section. It is entirely unclear whether the city's cash reserves are properly viewed as a reserve increase, a reserve transfer, or a reserve expenditure for purposes of subsection (2)(e). Plaintiffs' claim that the city's calculation of its fiscal year spending data may have misled the voters is without foundation because the city clearly disclosed in its election notice that fiscal year spending included the accrual of the cash reserves. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

Failure of election notice to include the overall percentage change in fiscal year spending over a five-year period is not significant. All of the information relevant to calculating the overall percentage change was provided by the city in its chart. On the whole, the election notice substantially complies with the disclosure requirements set forth in subsection (3)(b). Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

Where there is a discrepancy between the total debt repayment cost stated in the election notice and the amount stated in the ballot title, the district should be bound by the lower figure. The electorate did not receive any advance warning of the higher debt repayment cost stated in the ballot title. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

The absence of the district's submission resolution from the election notice did not make the election notice insufficient or misleading in any way. This section does not require districts to include in their election notices the ministerial acts, orders, or directions of the governing body authorizing submission of a particular initiative to the electorate where to do so would be duplicative and potentially confusing and would not add any substantive information to the election notice that was not already disclosed in the ballot title. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

Transportation revenue anticipation notes issued in accordance with § 43-4-705, constitute a "multiple fiscal year direct or indirect district debt or other financial obligation whatsoever" that requires voter approval. It is evident that the state is receiving money in the form of a loan from investors. Because the notes are negotiable instruments, it can be implied that the notes contain an unconditional promise of payment. It is apparent that the payment obligations are likely to extend into multiple years because the state must make a pledge of its credit for the notes to be marketable. Given the amount of notes issued in comparison to the annual budget of the department of transportation, it is reasonable for the voters to have expected that the notes would be submitted to them for their consideration. Sub. of Interrogatories on House Bill 99-1325, 979 P.2d 549 (Colo. 1999).

Economic incentive development agreements do not create a "multiple-fiscal year direct or indirect district debt or other financial obligation" requiring voter approval. The language of the agreement leaves the decision to make reimbursement payments to the discretion of the city council. Moreover, the agreements are not contingent on borrowing of funds, the extension of the city's credit, or any payments for which funds are unavailable. City of Golden v. Parker, 138 P.3d 285 (Colo. 2006).

Lease-purchase agreements authorized by House Bill 03-1256 did not constitute a "multiple fiscal year direct or indirect district debt or other financial obligation whatsoever" that requires

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voter approval. The lease-purchase agreements authorized do not pledge the credit of the state or require the borrowing of funds, and lease payment obligations of the state are subject to discretionary annual appropriations. Colo. Crim. Justice Reform Coalition v. Ortiz, 121 P.3d 288 (Colo. App. 2005).

Transfers from cash funds to the general fund do not constitute a tax policy change directly causing a net tax revenue gain. The transfers involve fees and not taxes, and consequently, they cannot involve a net revenue gain. Moreover, transfers are a redistribution of revenue rather than an increase in overall revenue. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

Nor do they constitute a new tax or a tax rate increase. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

A charge is a fee and not a tax when the express language of its enabling legislation explicitly contemplates that its primary purpose is to defray the cost of services provided to those charged. When determining whether a charge is a fee or a tax, courts must look to the primary or principal purpose for which the money was raised, not the manner it which it was ultimately spent. Barber v. Ritter, 196 P.3d 238 (Colo. 2008).

If the primary purpose of a charge is to raise revenue for general governmental use, it is a tax. If a charge is imposed as part of a comprehensive regulatory scheme, and if the primary purpose of the charge is to defray the reasonable direct and indirect costs of providing a service or regulating an activity, the charge is not a tax. Colo. Union of Taxpayers Found. v. City of Aspen, 2018 CO 36, 418 P.3d 506.

City's charge on non-reuseable bags was not a tax. The primary purpose was not to raise revenue, but to defray the reasonable direct and indirect costs of administering city's specific, regulatory, waste-reduction scheme, and to recoup the costs of recycling the bags that shoppers were still permitted to use under this regulatory scheme. Colo. Union of Taxpayers Found. v. City of Aspen, 2018 CO 36, 418 P.3d 506.

The statewide bridge enterprise is exempt from the voter approval requirements of this section. It is an exempt enterprise as defined in subsection (2)(a) because it is a government-owned business, the bridge safety surcharge that it imposes is a fee, not a tax, and the federal funds and designated bridges that it receives are not grants from the state or any local government. Consequently, it did not violate this section when it imposed a bridge safety surcharge and issued revenue bonds without prior voter approval. TABOR Found. v. Colo. Bridge Enter., 2014 COA 106, 353 P.3d 896.

Leases containing nonappropriation clauses do not create multiple-fiscal year obligations requiring voter approval in advance, and a lease that includes an initial 20-month period before its nonappropriation clause takes effect also does not require voter approval in advance because the district had adequate present cash reserves pledged for the first 20 months of lease payments. Bruce v. Pikes Peak Library Dist., 155 P.3d 630 (Colo. App. 2007).

Subsection (4)(a) does not require a school district to obtain voter approval for every tax or mill levy, but only for those taxes that are either new or represent increases from the previous year. To the extent that the school district's 1992 mill levy was the same as the previous year, subsection (4)(a) did not apply. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Subsection (4)(a) does not require a second election at either the local or state level for legislation directing how revenue received as a result of a waiver election should be used. Such legislation is not a policy change, but an implementation of the waiver election. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

A pre-TABOR election can serve as "voter approval in advance" for a post-TABOR mill levy

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increase. Bruce v. Pikes Peak Library Dist., 155 P.3d 630 (Colo. App. 2007); TABOR Found. v. Reg'l Transp. Dist., 2016 COA 102, 417 P.3d 850, aff'd on other grounds, 2018 CO 29, 416 P.3d 101.

Advance voter approval requirement held satisfied by 1984 approval of issuance of general obligation bonds. The incurment of debt and the repayment of that debt are issues that are so intertwined that they may properly be submitted to the voters as a single subject. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

Voters may give present approval for future increases in taxes under this section when the increase might be necessary to repay a specific, voter-approved debt. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

The voter-approval requirement in subsection (4)(a) applies only to applicable tax changes enacted after this section. The requirement leaves previously enacted legislative measures in place unless superseded by this section, even if the implementation of the measure occurs after the effective date of this section. Huber v. Colo. Mining Ass'n, 264 P.3d 884 (Colo. 2011).

Prior voter approval is not required for the tax rate increase on the severance of coal. The increase results from the department applying an adjustment factor to the coal tax that was enacted prior to the constitutional requirement for prior voter approval. Accordingly, the rate change is a nondiscretionary, ministerial function of the department and not a tax increase. Huber v. Colo. Mining Ass'n, 264 P.3d 884 (Colo. 2011).

Legislation that causes only an incidental and de minimis tax revenue increase does not amount to a "new tax" or a "tax policy change". The purpose of the bill was to simplify collection and administration of taxes and relieve taxpayers' confusion and vendors' administrative burden from having to comply with slightly disparate sales tax bases. The tax revenue gain from the change was projected to increase the two districts' tax revenue by a small percentage and was likewise a small percentage of the districts' budgets. Therefore, the changes were incidental and de minimis and not revenue raising. TABOR Found. v. Reg'l Transp. Dist., 2018 CO 29, 416 P.3d 101.

Abatements and refunds levy, designed to recoup tax revenue lost because of an error in assessment, is not subject to subsection (4)(a). But for the error, such revenue would have been collected, and the total dollar amount of taxes imposed does not increase although the mill levy rate may change. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

District levy for purposes of meeting federal requirements predated this section, hence was exempt, in view of statutory budgeting process that gives no discretion to board of county commissioners to alter budget fixed earlier in the year. Bolt v. Arapahoe County Sch. Dist. No. 6, 898 P.2d 525 (Colo. 1995).

While authority's bonds constituted a financial obligation under this section, the remarketing of the bonds nevertheless was not subject to subsection (4)(b), since the bond remarketing scheme does not create any new obligation, it merely remarketed debt that was authorized before the enactment of this section under the terms of a financing plan adopted at the time the debt was issued. Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Intergovernmental loan repayment was a new multi-year fiscal obligation to which subsection (4)(b) applied and authority must obtain voter approval before incurring this debt. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

A broadly worded, voter-approved waiver of revenue limits, authorizing school districts to

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collect and retain all revenues notwithstanding the limitations of this section does just that, with no restrictions or language requirements. There are no specific language requirements for this type of waiver election. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

Expansion of local use tax base to include all tangible personal property rather than only construction or building materials constituted a new tax and required voter approval in advance under subsection (4)(a). HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 Colo. App. 2008).

The delayed voting provision of subsection (3)(a) does not authorize retroactive voter approval of new taxes or other revenue generating measures requiring voter approval in advance under subsection (4)(a). In adopting this section, the voters intended that approval of a tax must occur before it is imposed, not afterward, and an interpretation of this section that prohibits retroactive approval reasonably restrains government more than a contrary interpretation. HCA-Healthone, LLC v. City of Lone Tree, 197 P.3d 236 Colo. App. 2008).

IV. SPENDING AND REVENUE LIMITS.

Strict compliance with the revenue and spending limitations of this section is required. While a substantial compliance standard of review applies to the election provisions of this section in order to ensure that the voting franchise is not unduly restricted and prevent a court from lightly setting aside election results, this section contains no "de minimis" or "substantial compliance" exception to its revenue and spending provisions. Bruce v. Pikes Peak Library Dist., 155 P.3d 630 (Colo. App. 2007).

The school finance act incorporated by reference the property tax revenue limit and each district's corresponding ability to waive that limit pursuant to subsection (7)(c). The property tax revenue "limit" imposed by the school finance act is a reference to the subsection (7)(c) limit and not an "other limit" as contemplated by subsection (1). Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

The electorate of a governmental entity may authorize retention and expenditure of the excess collection without forcing a corresponding revenue reduction. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Although the great outdoors Colorado trust fund board is not a local government, private entity, agency of the state, or enterprise under this section, it is essentially governmental in nature and the best reading of this section is to exclude from state fiscal year spending limits only those entities that are non-governmental since this interpretation is the interpretation that reasonably restrains most the growth of government. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

Section 9 of article XVIII of the Colorado Constitution prohibits the general assembly from enacting limitations on revenues collected by the Colorado limited gaming commission in order to comply with this section, and insofar as revenues generated by limited gaming might tend in a given year to violate the spending limits imposed by this section, the general assembly may comply with this section by decreasing revenues collected elsewhere, or if that is impossible after the fact, the general assembly may comply with this section by refunding the surplus to taxpayers. Sub. of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993).

The party seeking to invoke the "preferred interpretation" has the burden of establishing that its proposed construction of this section would reasonably restrain the growth of government more than any other competing interpretation. The mere assertion by a party that its interpretation would "reasonably restrain most the growth of government" is not dispositive. Bickel v. City of Boulder, 885 P.2d 215 (Colo. 1994), cert. denied, 513 U.S. 1155 (1995).

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"Offset" is not a term of art defined by this section or utilized in a compensatory financial sense in the applicable provision; rather, read in context, the reasonable meaning of the operating phrase "revenue change as an offset" in subsection (7)(d) is that voter approval for the excess revenue retention constitutes the required offset to the refund requirement which otherwise would apply. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

The electorate's approval for retention of the excess revenues as a "revenue change" is the required "offset" to the governmental entity's otherwise applicable refund obligation: "[T]he excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset." Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Remarketing of revenue bonds does not constitute creation of debt requiring voter approval under this section because the remarketing does not create any new debt, impose any tax, or expose taxpayers to any new liability or obligation. Bd. of County Comm'rs v. E-470 Pub. Hwy., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

Under this section, bonded debt increases annual fiscal spending only by the amount of the debt service, not by the amount of the borrowed funds expended; thus, the expenditure of the escrowed bond proceeds for further construction and the operation of E-470 highway does not impact annual fiscal spending, and is not subject to the voter approval requirements of subsection (7)(d). Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

The collection and expenditure of Authority revenues for service on bonds are "changes in debt service," to which the provisions of subsection (7)(b) do not apply under the plain language of this section. Bd. of County Comm'rs v. E-470 Pub. Hwy. Auth., 881 P.2d 412 (Colo. App. 1994), aff'd in part and rev'd in part sub nom. Nicholl v. E-470 Pub. Hwy. Auth., 896 P.2d 859 (Colo. 1995).

It is incorrect to interpret the phrase "revenue change as an offset" in subsection (7)(d) to require that offsetting revenue reductions must be paired with the retained excess revenues for the following reasons: (1) Such a construction would restrict the electorate's franchise in a manner inconsistent with the evident purpose of this section, which is to limit the discretion of governmental officials to take certain taxing, revenue, and spending actions in the absence of voter approval; (2) such a construction does not accord with legitimate voter expectations that this section, if adopted, would defer to citizen approval or disapproval certain proposed tax, revenue, and spending measures that varied from this section's limitations; (3) the general assembly has construed this section as including the approval of revenue changes, under subsection (7) by means of measures referred to the voters by local government; (4) such a construction conflicts with the clear pattern of this section deferring to voter choice in the waiver of otherwise applicable limitations; and (5) the court has declined to adopt a rigid interpretation of this section which would have the effect of working a reduction in government services. Havens v. Bd. of County Comm'rs, 924 P.2d 517 (Colo. 1996).

Subsection (8)(c) prohibits a presumption in favor of any pending valuation in order to put a taxpayer on equal footing with a county in property tax valuation proceedings but does not address or modify a taxpayer's burden of proof at a board of assessment appeals proceeding. A taxpayer thus must prove by a preponderance of the evidence only that an assessment is incorrect to prevail at a board of assessment appeals proceeding and is not required to establish an appropriate basis for an alternative reduced valuation for the property at issue. Bd. of Assessment Appeals v. Sampson, 105 P.3d 198 (Colo. 2005).

The language "tax policy change" cannot be applied to any policy modifications that may

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have a de minimis impact on a district's revenues. In some cases, the cost of the election to authorize a tax policy change could exceed the additional revenue obtained, which would be an unreasonable result that the voters could not have intended when they passed this section. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

A "tax policy change directly causing a net revenue gain" only requires voter approval when the revenue gain exceeds the limits dictated by subsection (7). To find that a tax policy change resulting in a net tax revenue gain that does not violate subsection (7) revenue limits requires voter approval would eliminate the need for the detailed revenue limits entirely. Mesa County Bd. of County Comm'rs v. State, 203 P.3d 519 (Colo. 2009).

V. STATE MANDATES.

"Subsidy" of state by county is legally impossible. Attempted turnback by county of its responsibilities under human services code pursuant to subsection (9) was invalid because when a county (itself a political subdivision of the state) attempts to subsidize the state, the state, through the county, contributes to itself. Therefore, county's contribution to cost of social services program is not a "subsidy" and subsection (9) does not apply. Romer v. Bd. of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

This section did not change the mixed state and local character of social services. Romer v. Bd. of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

A county's duties to the state court system, including security, may not be reduced or ended pursuant to subsection (9). State v. Bd. of County Comm'rs, Mesa County, 897 P.2d 788 (Colo. 1995).

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