



**Supporting Community Based Governments**

# Board Member Manual

A Reference Guide for  
Special Districts

**This document updated May 2013**

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## SDA Publications

SDA Model Personnel Guidelines  
Incorporates state/federal statutes pertaining to personnel issues and provides special district representatives with ideas and sample language for use in adopting or modifying employment policies. Word document allows you to personalize for your district.

SDA Membership Directory  
Full listing of all SDA Member Districts, managers, Board members and SDA Associate Members and services.

SDA Board Member Manual  
A general survey and reference of statutory responsibilities for board members of special districts.

SDA Laws Notebook  
Contains major statutory provisions pertinent to special districts, including full text of the TABOR Amendment and a user friendly index with Case Citations; revisions published annually.

**Special District  
Board Member Manual**

*prepared by*

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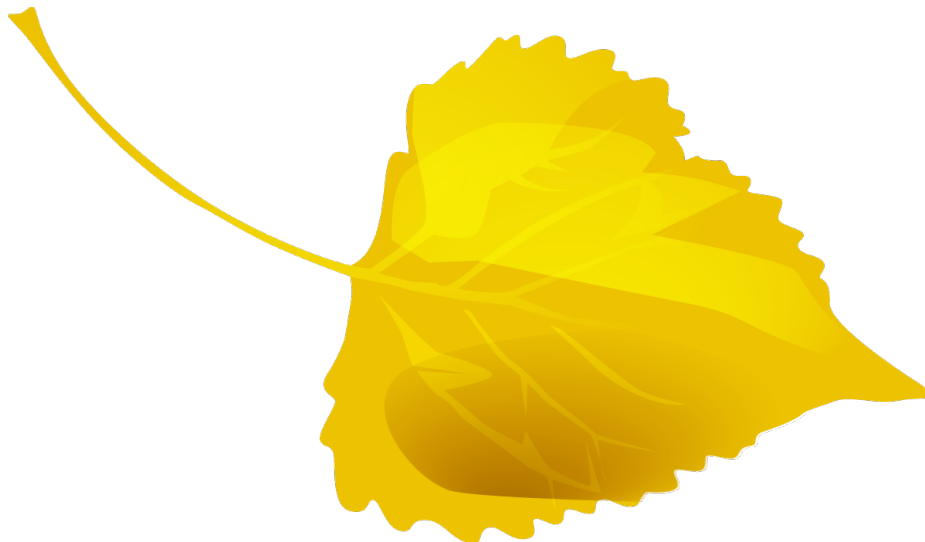
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This Manual is intended to be a general survey of statutory responsibilities for members of the Board of Directors of a Colorado Special District. This Manual is neither designed nor intended to be a legal analysis of the subjects contained herein. The passage of time, new court decisions, and future legislation will cause portions of this manual to become outdated. Further, the answer to any particular legal question turns heavily on all of the facts specific to the issue. The reader is strongly encouraged to seek the advice and assistance of legal counsel experienced in Special District matters as to any legal issues that arise.

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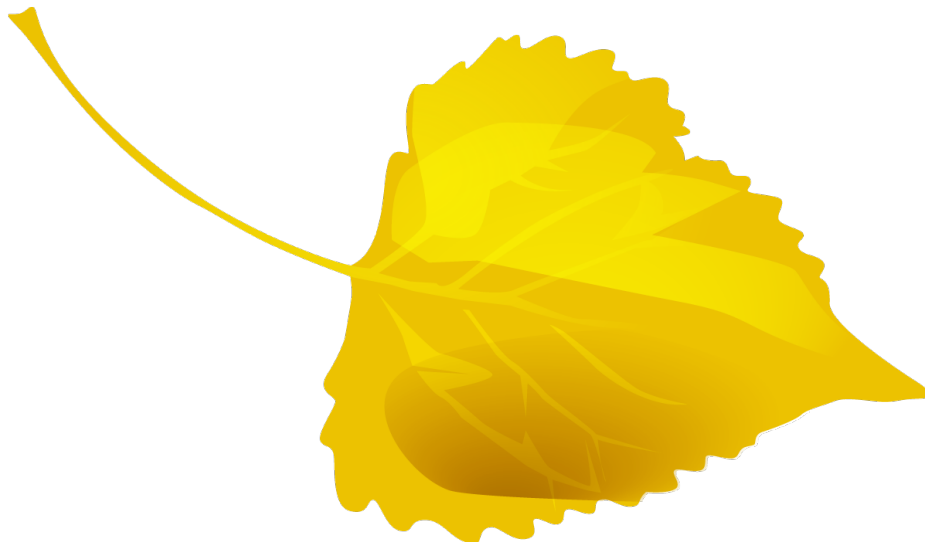
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**This document updated May 2013**



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## Chapter I Board Membership

### A. Qualifications:

To qualify as a Director of a special District, a person must be an “eligible elector” which is defined as a **registered voter** of Colorado **and either:**

1. **A resident** of the District for not less than thirty (30) days, or
2. **The owner (or the spouse of the owner) of taxable real or personal property situated** in the District.

For the purposes of # 2 above, a mobile or manufactured home qualifies as “real property,” and a person who is under contract to purchase taxable property and is obligated to pay the taxes prior to closing shall be considered an “owner.” *§32-1-103(5), Colorado Revised Statutes (“C.R.S.”)*.

Director qualifications must be met at the time of the execution of the self-nomination form or letter or at the time of appointment by the Board of Directors, if filling a vacancy, and must be maintained in order to remain qualified as a Director.

Property that is owned by a legal entity such as a corporation, LLC, partnership, or Trust does not qualify a person as an eligible elector on the basis of property ownership.

### B. Taking Office:

#### 1. Oath:

Each Director, within thirty (30) days after election or appointment, shall take an oath of faithful performance. *§32-1-901(1), C.R.S.* The oath must be administered by a qualified official (Board chairman, notary public, clerk of the court, or clerk and recorder) and filed with the clerk of the District Court that issued the District’s organizational decree, the county clerk and recorder for the counties in which the District is situated, and the Division of Local Government. *§24-12-103 and §32-1-901(1), C.R.S.; Article XII, Section 9 of the Colo. Constitution.*

#### 2. Bond:

Along with the oath, an individual, schedule or blanket surety bond of not less than \$1,000 must be filed for each director with the clerk of the court and the Division of Local Government, conditioned upon the faithful performance of his/her duties as director. *§32-1-901(2), C.R.S.*

The Treasurer must file with the clerk of the court a corporate fidelity bond of not less than \$5,000. *§32-1-902(2), C.R.S.* The bond(s) shall be in amounts determined by the Board, and at the expense of the District. It is common for a District to obtain and file a single blanket position schedule bond, setting forth the required amounts for each of the positions of director and the amount for the position of treasurer. The surety bond and fidelity bond requirements are satisfied if the District buys crime coverage from the Colorado Special Districts Property and Liability Pool.

#### 3. Commencement of Term:

A director’s regular term of office commences at the next meeting of the Board following the date of the organizational or regular election and upon administration of the oath and posting the bond, but no later than thirty (30) days following the survey of returns of election or date of regular election if the election has been cancelled. *§1-1-202, C.R.S.*

### C. Vacancies:

A Director’s office shall be deemed vacant upon the occurrence of any one of the following *§32-1-905(1), C.R.S.:*

1. Failure to meet the qualifications of Director;
2. Failure to satisfy the oath and bond requirements;
3. Written resignation;
4. Failure to remain qualified for the office;
5. Conviction of a felony;
6. Removal from office or voidance of election by court (subject to appeal);

7. Failure to attend three consecutive regular Board meetings followed by a fourth absence, unless approval of the fourth absence is entered in the minutes, or is excused by temporary mental or physical disability or illness; or
8. Death.

Any vacancy shall be filled by appointment by the remaining Directors. If the Board fails to fill the vacancy within sixty (60) days, the Board of County Commissioners may make the appointment. The Director appointed to fill a vacancy shall serve until the next regular election, at which time the vacancy shall be filled by election for the remainder, if any, of the originally vacated term. *§32-1-905(2)(a), C.R.S.*

Typically, there is no legal requirement to post or publish notice of a vacancy prior to the District Board appointing someone to fill it. However, prior to conveying title to taxable property in the name of another or entering into a contract to purchase or sell taxable property for the purpose of qualifying such person as an eligible elector in order to fill a vacancy, notice of such vacancy must be published and ten days must pass after the publication of such notice during which no otherwise qualified eligible elector files a letter of interest in filling such position with the board. *§32-1-808(2)(a)(I), C.R.S.*

#### **D. Term Limits:**

Directors are limited to two consecutive terms of office, unless the voters of the District lengthen, shorten or eliminate that limitation. *Article XVIII, Section 11, Colorado Constitution.* Term limits apply only to elected four-year terms, not to interim terms that arise by appointment to fill a vacancy or to elected two-year terms created due to a vacancy. *Attorney General Opinion No. 2000-2 (February 9, 2000).*

The term-limited elected official cannot run again for election to the same body by moving to a new director District, redistricting, or a change in the at-large or specific District nature of the seat currently occupied. *Attorney General Opinion No. 2000-5 (July 10, 2000).* Also see *Attorney General Opinion No. 2005-4 (August 16, 2005).*

#### **E. Filings and Postings:**

Directors are responsible for ensuring that mandatory filings are made and actions are taken. The following schedule includes the primary statutory filings required:

## Filings and Posting Schedule

ACTION	OFFICE	DEADLINE
A current, accurate map of the District boundaries <i>§32-1-306, C.R.S.</i>	Division of Local Government, County Clerk & Recorder and County Assessor of each county in which the District is situate	January 1
Notice to Electors <i>§32-1-809, C.R.S.</i>	All eligible electors, Clerk & Recorder of each county in which the District is located, and the Division of Local Government	No more than 60 days prior to and not later than January 15
Name of Chairman of the Board, the contact person, telephone number and business address of the District <i>§32-1-104(2), C.R.S.</i>	Board of County Commissioners, County Assessor, County Treasurer, County Clerk and Recorder, governing body of any municipality in which District is located, Division of Local Government	January 15
Resolution designating where the District's agenda notice posting place shall be <i>§24-6-402(2)(c), C.R.S.</i>	None	First Board of Directors meeting of each year
Post Notices of meetings of a quorum of the Board:  1. Regular meetings <i>§32-1-903(2), C.R.S.</i>  2. Special meetings <i>§32-1-903(2), C.R.S.</i>  3. All meetings (Includes agenda items) <i>§24-6-402(2)(c), C.R.S.</i>	County Clerk and Recorder of each county where the District is located, three public locations within District boundaries  County Clerk and Recorder of each county where the District is located, three public locations within District boundaries  At designated posting location	72 hours prior to meetings throughout the year. We recommend once at the beginning of each year.  72 hours prior to any special meeting.  24 hours prior to all Board meetings at the designated location, pursuant to above resolution.
Certified copy of adopted budget <i>§29-1-113(1), C.R.S.</i>	Division of Local Government	No later than January 30 (enact Resolution adopting budget by December 15, if certifying mill levy, or December 31, if not levying property taxes)
Updated information list of all contracts in effect with other political subdivisions, including parties, nature of contract and expiration date <i>§29-1-205, C.R.S.</i>	Division of Local Government	Within 30 days after receiving a written request from the Division of Local Government (as of August 7,2013)
Report of outstanding non-rated public securities as of the end of the fiscal year <i>§11-58-105, C.R.S.</i>	Division of Local Government.	March 1
Application for audit exemption (if applicable) <i>§29-1-604, C.R.S.</i> and <i>§29-1-606(7), C.R.S.</i>	State Auditor  If the District has authorized but unissued general obligation debt as of the end of the fiscal year, send copy to Board of County Commissioners for each county in which District is located or governing body of municipality that approved the Service Plan	March 31

## Filings and Posting Schedule

<p>Audit report <i>§29-1-606, C.R.S.</i></p>	<p>State Auditor</p> <p>If the District has authorized but unissued general obligation debt as of the end of the fiscal year, send copy to Board of County Commissioners for each county in which District is located or governing body of municipality that approved the Service Plan</p>	<p>30 days after report is received, but not later than July 30</p>
<p>Certificate of Election results <i>§1-11-103, C.R.S.</i></p>	<p>Division of Local Government</p>	<p>Within 30 days after election day</p>
<p>Certification of ballot issue election to incur general obligation indebtedness <i>§32-1-1101.5(1), C.R.S.</i></p>	<p>Board of County Commissioners for each county in which District is located or governing body of municipality that approved the Service Plan, and the Division of Securities</p>	<p>Within 45 days after election day, by certified mail</p>
<p>Annual Report <i>§32-1-207(3)(c), C.R.S.</i></p>	<p>Board of County Commissioners, any municipality in which District is located, Division of Local Government, State Auditor, and County Clerk and Recorder</p>	<p>Upon request of Board of County Commissioners or Municipality</p>
<p>Certification of mill levy <i>§39-5-128(1), C.R.S.</i></p>	<p>Board of County Commissioners</p>	<p>December 15</p>
<p>Resolution Adopting Budget and Appropriating Sums of Money <i>§29-1-108(2), C.R.S.</i></p>	<p>None required, but recommend filing with Division of Local Government</p>	<p>Adopt prior to Certification of mill levy (December 15), or prior to December 31 if not levying property taxes.</p>
<p>Transparency Notice <i>§32-1-809, C.R.S.</i></p>	<p>County Clerk and Recorder, Division of Local Government, and must be available for public inspection at the District's principal business office. In addition, it must be (a) mailed to each household; (b) included prominently in a newsletter, billing statement, or other informational mailing sent to eligible electors; (c) posted on the District's website if the Division of Local Government's website has a link to the District's website; (d) posted on the SDA website (SDA members only); <b>or</b> (e) for Districts with less than 1,000 eligible electors wholly located within a county with a population of less than 30,000, posted in at least 3 public places within the District's limits and in the Clerk and Recorder's office. The notices shall remain posted until the Tuesday succeeding the first Monday of the following May.</p>	<p>Between November 16 and January 15 (no more than 60 days prior to and not later than January 15 of each year)</p>
<p>Record Special District Public Disclosure Document and map of the District's boundaries <i>§32-1-104.8, C.R.S. (H.B. 13-1186)</i></p>	<p>County Clerk and Recorder of each county where the District is located</p>	<p>December 31, 2014 for Districts existing as of August 7, 2013.</p> <p>For Districts organized after August 7, 2013, or for inclusion of additional real property within an existing District, must record at the same time the decree or order confirming the action is recorded.</p>

## **F. Fiduciary Obligations:**

### **1. General:**

A Director has a general, common-law fiduciary obligation to the District. *§24-18-109, C.R.S.* This obligation does not extend to each individual resident of the District, but rather to the District itself. As a fiduciary, the Director has the duty to exercise the utmost good faith, business sense and astuteness on behalf of the District. A Director is prohibited from taking personal advantage of a situation to benefit himself or prejudice the District.

### **2. Confidential Information:**

Directors will likely become privy to confidential information about the District. When a District seeks legal counsel, the communications between the lawyer and the District are confidential and are protected by the attorney-client privilege. *The Colorado Rules of Professional Conduct, Rule 1.6 and §13-90-107(1)(b), C.R.S.* Discussions regarding specific legal questions in executive session are “privileged.” *Id. and Patricia C. Tisdale and Erin M. Smith, The Maverick Council Member: Protecting Privileged Attorney-Client Communications from Disclosure, 23 COLO. LAW. 63, 63 (1994).*

The attorney-client privilege protects the content of communications with the District’s attorney from disclosure in court. This is an important protection for the District. Be careful, though, because the privilege can be lost by disclosing the confidential communications to a third party. Once the privilege is lost, the content of the communications is no longer considered confidential, and it can be used against the District in future lawsuits.

Keep in mind that the District holds the attorney-client privilege, not the individual Board members. *The Colorado Rules of Professional Conduct, Rule 1.13.* Therefore, only the District as a whole can waive the attorney-client privilege by an intentional, official act, such as adoption of a resolution. An inadvertent or unauthorized disclosure of confidential information by one Director does not constitute a waiver of the privilege, meaning the “leaked” information cannot be used against the District in court. Still, it can still be extremely damaging to the District if Directors discuss confidential information with people who are not on the Board, even it seems harmless to you.

You can protect the District’s confidential information by not discussing District affairs with anyone outside of Directors and the District’s attorney.

## **G. Compensation:**

### **1. Limitations:**

Directors may receive compensation not in excess of \$1,600 per annum, payable not to exceed \$100 per meeting attended. *§32-1-902(3)(a), C.R.S.* Any “perks” received by a Director may be considered compensation and subject to the limitations, unless they are in exchange for value actually received or are considered to be a valid expense otherwise subject to reimbursement.

No Director shall receive any compensation as an employee of the special District. *§32-1-902(3)(b), C.R.S.*

### **2. Reimbursement:**

Reimbursement of actual expenses for Directors shall not be considered compensation. *§32-1-902(3)(b), C.R.S.* Actual expenses may include mileage and out-of-pocket expenses incurred in service as a Director.

### **3. Gifts:**

Although most attorneys do not believe it applies to special Districts, Amendment 41 adopted in 2006 places further prohibitions on gifts with value exceeding \$53 (adjusted) given to county and municipal officials, employees of local governments and their immediate family members. This gift ban is unrelated to any official action, and is without regard to any intent to corrupt or influence. *Art. XXIX, Sect. 3, Colorado Constitution.*

For a discussion of the rules surrounding gifts to Directors and conflicts of interest, see Chapter VII - Conflict of Interest.

## **H. Bylaws, Rules and Regulations, and Policies:**

The Board of Directors may adopt bylaws which would govern other aspects of Board membership, and Rules and Regulations not in conflict with state law. *§32-1-1001(1)(m), C.R.S.* Bylaws have been found to be helpful in maintaining order and providing a framework for the Board’s actions. Rules and Regulations are important to adopt as laws for the operation of the District.

The courts enforce adopted Rules and Regulations, and yield to the judgment and discretion of the District's Board of Directors in matters of interpretation and application. *Bennett Bear Creek Farm Water and Sanitation District v. City and County of Denver*, 928 P.2d 1254 (Colo. 1997). A court will not imply rules and regulations if they have not been formally adopted by the governing body.

Policies and procedures (usually for staff purposes) on personnel matters, handling of District money, investments, authorization to make contracts, etc., are also important for the efficient operation of the District.

#### **I. Recall:**

Any Director who has held office for at least six months may be subject to recall. §32-1-906, C.R.S. and §1-12-102(1), C.R.S.

In order to recall a Director, a petition signed by the lesser of 300 or 40% of eligible electors must be filed asserting the grounds for recall, and a recall election must be held. §§32-1-906, -907 C.R.S.

The election of a successor shall be held at the same time as the recall election. §1-12-118(1), C.R.S.

#### **J. Inactive Status for Certain Districts:**

A District that is in a predevelopment stage, has no business or commercial ventures or facilities in its boundaries, has not issued any general obligation or revenue debt, has not imposed a mill levy for collection, anticipates no revenue and has no planned expenditures, and has no operation or maintenance responsibility for any facilities may enter into "inactive status," during which time the District is relieved from compliance with certain statutory obligations and filings, such as boundary maps, annual notice to electors, noticing and conducting regular and special board meetings, budgeting procedures, filing list of intergovernmental contracts and agreements, annual audits or applications for exemption, and property valuation and assessment and mill levy certification procedures.

A period of inactive status is commenced by the Board adopting a resolution of inactive status and filing (by December 15) a notice of inactive status with certain prescribed entities. Permitted activities during this "time-out" period are conducting elections and undertaking the procedures necessary to implement a return to active status.

The District must come into compliance with all the legal requirements from which it has been exempt in order to return to active status. §32-1-104(3)-(5), C.R.S.



## Chapter II Board Meetings

### A. Calling the Meeting:

#### 1. Designation of Time and Place:

The Board must designate and post the time and place for all Board meetings. *§32-1-903(1)-(2), C.R.S.* The Board must adopt a resolution at the first regular meeting of each year designating the posting place of the 24-hour agenda notice. *§24-6-402(2)(c), C.R.S.* We recommend that such resolution be adopted at the first meeting of each year, regardless of whether it is a special or regular meeting.

All special and regular Board meetings must be at locations within the District boundaries, or within the boundaries of any county or counties in which the District is located, or, if outside the county, at a location not greater than twenty (20) miles from the District boundaries, unless (i) the Board adopts a resolution stating the reason for holding the meeting at an alternate location and the date, time and place of the meeting; and (ii) the proposed change of location appears on the meeting agenda for the meeting at which the resolution is considered. *§32-1-903(1), C.R.S.*

#### 2. Notice to Directors:

All Directors must be notified of any regular or special meeting of the Board. *§32-1-903(1), C.R.S.*

#### 3. Notice to Public:

##### a. 72-hour Notice:

Notice of the time and place of designated regular or special meetings shall be posted in at least three public places within the boundaries of the District and in the office of the county clerk and recorder of each county in which the District is located, at least 72 hours prior to said meeting. *§32-1-903(2), C.R.S.* Special notice must be included in the 72-hour notice posting of the decision to undertake any of the following acts. *§32-1-903(3), C.R.S.:*

- i. Making a final determination to issue or refund general obligation indebtedness;
- ii. Consolidating the District;

iii. Dissolving the District;

iv. Filing a plan for adjustment of debt under federal bankruptcy law;

v. Entering a private contract with a Director; or

vi. Not making a scheduled bond payment.

##### b. 24-hour Notice:

In addition to the 72-hour notice requirement, notice of all meetings of a quorum of the Board at which any public business is discussed must be posted at a designated public location within the District no less than 24 hours prior to said meeting. The 24-hour posted notice must include specific agenda information when possible. *§24-6-402(2)(c), C.R.S.*

##### c. Requested Notice:

The District must keep a list of all persons requesting notice of all meetings or of meetings when certain specified policies will be discussed, and provide reasonable advance notice to such persons. Once a person has requested individualized notice, they are to be included on the list for two years. What constitutes “reasonable” notice is left to the discretion of the District. Inadvertent failure to provide notice to a listed person will not invalidate the meeting or actions taken at such meeting. *§24-6-402(7), C.R.S.*

### B. Open to the Public:

All meetings of a quorum, or three or more members (whichever is fewer), of the Board of Directors at which public business is discussed or formal Board action may be taken must be open to the public. *§24-6-402(2)(b), C.R.S.* Open meeting requirements do not apply to chance meetings or social gatherings at which discussion of public business is not the central purpose.

Open meeting requirements apply to formal meetings of the Board and study sessions. Such requirements do not apply to staff meetings where a quorum of the Board is not present.

Open meetings must be open to all members of the public, including reporters, attorneys and any other representatives.



The use of recording devices at open meetings is neither prohibited nor required by the Colorado statutes. Many attorneys believe that the Board must allow for video and audio recording of its meetings, but may prescribe rules for the use of recording devices, such as specifying the location where recorders must be positioned and restricting recordings which interrupt or interfere with the conduct of the meeting.

### **C. Rules of Procedure:**

The Board may adopt standard rules of procedure to govern how Board meetings are conducted. Such rules provide desirable order and efficiency, and may be included within the District Bylaws.

### **D. Voting:**

A quorum (more than one-half of the number of directors serving on the Board, of the Board must be present before the District may take any official act or vote. A majority of the quorum in attendance is required to pass a measure. [§32-1-103\(16\), C.R.S.](#) and [§32-1-903\(2\), C.R.S.](#)

A Director is required to devote his/her personal attention to matters of the District. Such attention requires a Director's own individual vote; proxy voting is not permissible. The Chairman/President can make motions and can vote.

### **E. Attendance:**

A Director is required to attend Board meetings. Attendance may be made via telephone conference. As long as the director is able to hear and be heard, telephonic attendance satisfies the attendance requirement. Any absences should be noted and excused (where appropriate) in the minutes of the meeting.

Failure to attend three consecutive regular meetings for any reason followed by a fourth absence will result in the mandatory removal of the Director, unless approval of the fourth absence is entered in the minutes, or is excused by temporary mental or physical disability or illness. [§32-1-905\(1\)\(g\), C.R.S.](#)

### **F. Minutes:**

The Secretary of the Board must keep accurate minutes of all Board meetings. [§32-1-902\(1\), C.R.S.](#)

The minutes shall be kept in a visual text format that may be transmitted electronically and shall be open to public inspection upon request. [§§32-1-902\(1\), 24-6-402\(2\)\(d\)\(II\), C.R.S.](#)

### **G. Executive Sessions:**

An executive or "closed" session may only be called at a regular or special meeting of the Board (not at a study session) by an affirmative vote of two-thirds of the quorum present. [§24-6-402\(4\), C.R.S.](#)

Executive sessions should be noted on the agenda for all meetings whenever possible.

The Chairman of the Board must announce, and the minutes reflect, one of the following topics of discussion for a valid executive session:

1. Purchase, acquisition, lease, transfer or sale of any property interest;
2. Conferences with the District's attorney regarding legal advice on specific legal questions; (*Note, the mere presence or participation of an attorney is not sufficient to satisfy this requirement.*)
3. Confidential matters pursuant to State or Federal law;
4. Security arrangements or investigations;
5. Negotiations;
6. Personnel matters, except if the employee who is the subject of the executive session has requested an open meeting; or if the personnel matter involves more than one employee, all of the employees must request an open meeting;
7. Items concerning mandatory nondisclosure; or

8. Discussion of individual students where public disclosure would adversely affect the person.

If the topic of executive session is confidential due to State or Federal law, a specific citation to the applicable law must be announced. *§24-6-402(4)(c), C.R.S.*

Discussions that occur in an executive session shall be electronically recorded, including the specific citation to the Colorado Revised Statutes that authorizes the Board to meet in an executive session and the actual contents of the discussion during the session. *§24-6-402(2)(d.5)(II)(A), C.R.S.*

Executive session discussions between the Board and the District's attorney regarding specific legal questions are confidential and protected by attorney-client privilege. Therefore, they need not be recorded, electronically or otherwise. If they are not recorded, the attorney must attest that the portion of the discussion not recorded constituted privileged attorney-client communications, either by stating so on the tape or providing a signed statement which will be added to the minutes. *§24-6-402(2)(d.5)(II)(B), C.R.S. and The Colorado Rules of Professional Conduct, Rule 1.6.*

No formal action (vote) may be taken while in executive session. *§24-6-402(4), C.R.S.*

The District must retain the record of any executive session for at least ninety (90) days. *§24-6-402(2)(d.5)(II)(E), C.R.S.*

#### **H. Resolutions and Motions:**

Official action of the Board may be taken through the adoption of a resolution, or by a motion duly made and passed by a majority vote of the Directors present at the meeting.

## Chapter III Elections

Note: The Uniform Election Code (Articles 1 to 13 of Title 1, C.R.S.) (“Election Code”) applies to special District elections and should be read in conjunction with Part 8, Article 1 of Title 32, C.R.S. The following is an overview of the election requirements. **The Legislature amends the Election Code regularly - check the Election Code for statutory changes enacted after the publication of this Manual.**

### A. Coordinated Elections:

#### 1. Applicability:

A coordinated election is when more than one political subdivision with overlapping boundaries or the same electors holds an election on the same day and the county clerk and recorder is the coordinated election official. All November elections in which eligible electors are the same or boundaries overlap shall be coordinated elections. *§§1-1-104(6.5), 1-1-111(3), 1-7-116, C.R.S.*

Regular elections, special elections, and court-ordered elections conducted other than in November may be conducted as coordinated elections if (i) there is an overlap of electors or boundaries, (ii) the County Clerk and Recorder is the Coordinated Election Official, and (iii) the County, District, and other jurisdictions agree. *§§1-1-104(6.5), 1-1-111(3), 1-7-116, C.R.S.*

#### 2. Intergovernmental Agreement:

At least seventy (70) days prior to the November coordinated election, the District must enter into an Intergovernmental Agreement with the County Clerk and Recorder for the conduct of the election and mailing of the notice required by Article X, Section 20 of the Colorado Constitution (“TABOR Notice”).

The Agreement shall include, but not be limited to the following:

- a. An allocation of responsibilities between the District and the County Clerk and Recorder; and

- b. A provision for the sharing of expenses based upon “actual cost.”  
*§1-7-116(2), C.R.S.*

### B. Regular Elections:

Special Districts must hold regular elections on the first Tuesday after the first Monday in May in even-numbered years for the purpose of electing Directors to the Board and, as applicable, for the submission of other ballot issues or questions. *§32-1-103(17), C.R.S.*

### C. Special Elections:

Special elections may be held on the first Tuesday after the first Monday of February, May, October or December, in November of even-numbered years, or on the first Tuesday in November of odd-numbered years. Under circumstances of impossibility or impracticability, a court may order a special election to be conducted on a different election date. *§32-1-103(21), C.R.S.*

### D. TABOR Elections:

A TABOR ballot issue election must be conducted as either a coordinated election or as a mail ballot election. *§32-1-805(2), C.R.S.* TABOR elections can only be conducted at the regular election date, the general election date, or the first Tuesday in November of odd-numbered years. *Article X, Section 20(3)(a), Colo. Const.*

### E. Mail Ballot Elections:

The District may conduct an election by mail ballot after first obtaining approval from the Secretary of State of a written plan on conducting a mail ballot election. The written plan must be filed with the Secretary of State at least fifty-five (55) days prior to the election. *§§1-7.5-101, et seq., C.R.S.*

### F. Designated and Coordinated Election Officials:

For all November coordinated elections, the County Clerk and Recorder shall be the coordinated election official responsible for complying with notice and other statutory requirements, unless the Intergovernmental Agreement specifies otherwise. *§§1-1-104(6.5), 1-1-111(3), 1-7-116, C.R.S.*

The District Board shall appoint a Designated Election Official to conduct non-coordinated elections and assist in the conduct of coordinated elections. The Designated Election Official does not have to be the District Secretary. *§§1-1-111(2), 32-1-804(2), C.R.S.*

## **G. Election Notices:**

### **1. TABOR Notices:**

TABOR requires the mailing of a notice for ballot issue elections. The TABOR Notice shall be sent as a package where the boundaries of political subdivisions, including all special Districts with ballot issues, overlap. The TABOR Notice must be addressed to “All Registered Voters” and mailed to each address of one or more active registered electors of the District at least thirty (30) days prior to the election. *Article X, §20(3)(b), Colo. Const.*

The District must provide the County Clerk and Recorder with all necessary TABOR Notice information at least forty-two (42) days prior to a November coordinated election. *§1-7-904, C.R.S.* The County Clerk and Recorder shall have the responsibility of mailing the TABOR Notice package to each address where any active District elector resides within such County, if the election is being conducted in November. The Designated Election Official shall mail such notice to addresses of active District electors who do not reside in the County. *§1-7-906, C.R.S.*

The Designated Election Officials of special Districts with overlapping boundaries that will be submitting ballot issues at the regular election shall confer at least forty (40) days prior to the election regarding the preparation and mailing of the TABOR Notice as a package. Such special Districts must enter into an intergovernmental agreement for the preparation and mailing of the TABOR Notice. *§§1-7-905(2) and 1-7-906(3), C.R.S.*

### **2. Notice by Publication and Posting:**

Notice of the specific election information, including the date and time of election, hours during which the polling locations or drop-off locations will be open, address of the polling locations or drop-off locations, and for polling place elections, the complete ballot content must be published in a newspaper of general circulation within the District boundaries at least twenty (20) days prior to the date of the election. *§§1-5-205(1), 1-7.5-107(2.5), C.R.S.*

A copy of the notice must be posted in the office of the Designated Election Official at least ten (10) days prior to and until two (2) days after the election, and mailed to the County Clerk and Recorder. *§1-5-205(1.3), (2), C.R.S.*

A District submitting a ballot issue concerning the creation of debt or other financial obligation shall post notice on the District’s website or, if the District does not maintain a website, at the District’s chief administrative office, no later than twenty (20) days before the election. *§1-7-908(1)(a), C.R.S.*

### **3. Notice by Mail:**

A voter information card may be mailed no later than fifteen (15) days prior to the date of election to each household where one or more active eligible electors reside. If it is a ballot issue election, the information to be included in this notice may be included in the TABOR Notice. *§1-5-206(2)(a), C.R.S.*

## **H. Conduct of Elections and Procedures:**

For coordinated elections, the responsibility for the conduct and procedures of all elections shall be determined pursuant to the Intergovernmental Agreement with the County Clerk and Recorder. *§§1-1-111(3), 1-7-116, C.R.S.*

The District’s Designated Election Official should be aware of the following general requirements:

### **1. Election Resolution:**

The election process is initiated by Board adoption of an Election Resolution. Depending on whether the election is a regular biennial election, a November election, or a special election, the election resolution may address the following, as applicable: the election of members to the Board of Directors; polling place or mail ballot format; the location(s) of the polling place(s); any ballot issues/questions to be presented; whether the election will be conducted as a coordinated election with the County; and the appointment of the Designated Election Official.

### **2. Call for Nominations:**

Not less than seventy-five (75) days or more than ninety (90) days prior to the regular election, a Call for Nominations must be published one time. The notice must set forth the director offices to be voted upon at the

election, where a self-nomination and acceptance form may be obtained, the deadline for filing such form, and information on obtaining a mail-in ballot.

*§32-1-804.1, C.R.S.*

### **3. Candidates:**

A self-nomination and acceptance form signed by the candidate and one other registered voter of the District must be filed with the Designated Election Official no less than sixty-seven (67) days prior to the regular election. *§32-1-804.3(1), C.R.S.*

An affidavit of intent to be a write-in candidate must be filed with the Designated Election Official by the close of business on the 64<sup>th</sup> day prior to the date of election. *§1-4-1101(1) and §1-4-1102(2), C.R.S.*

The Designated Election Official shall provide copies of the self-nomination and acceptance forms and any affidavits of intent to be a write-in candidate to the Colorado Secretary of State no later than the date established for certification of the District's ballot. *Rule 16.2, Secretary of State Rules Concerning Campaign and Political Finance.*

### **4. Polling Places:**

The Designated Election Official, with the approval of the Board, shall establish one or more polling places not less than twenty-five (25) days prior to any non-coordinated election. *§1-5-102(1), C.R.S.* If there are no appropriate polling place locations within the District, a polling place may be designated outside of the District in a location that is convenient for the eligible electors of the District. *Rule 5.2, Secretary of State Election Rules.*

The polling place shall be in a public location whenever possible, but a private location may be used only when no appropriate public location is available. *§1-5-105(3), C.R.S.*

A polling place sign must be posted at each polling place at least twenty (20) days prior to the date of election. *§1-5-106, C.R.S.*

Polls shall be open continuously from 7:00 a.m. until 7:00 p.m. on the date of the election. *§1-7-101, C.R.S.*

### **5. Judges:**

The Designated Election Official shall appoint Election Judges no later than forty-five (45) days prior to the date of election. *§1-6-105(1.5), C.R.S.*

For polling place elections, the Designated Election Official shall appoint no fewer than two (2) Election Judges to serve at each polling location of the District. *§1-6-111(4), C.R.S.*

For mail ballot elections, the Designated Election Official may appoint an appropriate number of Election Judges to receive the ballots after they are mailed, to handle "walk-in" balloting, check voter registrations, inspect, verify and duplicate ballots when necessary, and count the ballots and certify results. *Rule 12.2.1, Secretary of State Election Rules.*

The Board must determine the amount of compensation to be paid to the Election Judges for their services, which amount shall be not less than \$5. *§1-6-115(1), C.R.S.*

### **6. Property Owner and Voter Lists:**

The Designated Election Official shall order the voter registration and property owners lists no later than forty (40) days prior to the day of election. The Designated Election Official may order initial voter registration and property owners lists to be received thirty (30) days prior to the day of election, with a supplementary list provided twenty (20) days prior, or complete lists provided twenty (20) days prior to the day of election. *§§1-5-303(1), 1-5-304, and 1-7.5-107(2)(a) and (b), C.R.S.*

### **7. Permanent Mail-in Voting for Metropolitan Districts:**

In a Metropolitan District election, the Designated Election Official shall mail a ballot to each elector on the permanent mail-in voter list maintained by the Metropolitan District. *§32-1-805(5)(b), C.R.S.*

### **8. Watchers:**

Each candidate for office and proponents and opponents of a ballot issue or ballot question are entitled to appoint one person to act as a watcher in every polling place in which they are a candidate or in which the issue or

question is on the ballot. The names of persons appointed to serve as watchers shall be certified to the Designated Election Official on forms provided by the Designated Election Official. Watchers must be eligible electors of the District. *§§1-7-107 and 1-7-108, C.R.S.*

### 9. Ballots and Voting Machines:

The Board may authorize the use of voting machines. *§1-5-603, C.R.S.*

The Designated Election Official must have available the printed ballots at least thirty (30) days prior to the election. *§1-5-406, C.R.S.*

The Designated Election Official shall prepare and deliver to the polling places sufficient equipment and ballots. *§1-5-410, C.R.S.*

The Designated Election Official shall issue mail-in ballots upon written request, and shall keep a record of: (i) name of each applicant; (ii) address to which the ballot is to be sent; (iii) date of receipt of application; (iv) date mail-in ballot was sent; and (v) date of return of mail-in ballot. *§1-8-108, C.R.S.* The request for a mail-in ballot may be made in writing or by fax, using the application form furnished by the Designated Election Official or in the form of a letter that includes the applicant's printed name, signature, residence address, date of birth and whether the applicant wishes to be designated as a permanent mail-in voter pursuant to *§1-8-104.5, C.R.S.* The application must be filed with the Designated Election Official no later than the close of business on the Friday preceding the election, except that if the applicant desires to receive the mail-in ballot by mail, the application must be filed by the close of business on the 7<sup>th</sup> day before the election. *§1-8-104, C.R.S.*

Mail-in ballots, sealed in return envelopes, shall be returned to the Designated Election Official no later than 7:00 p.m. on the day of election. *§1-8-113, C.R.S.*

### 10. Eligible Electors:

Any person desiring to vote at any election shall be required to sign a self-affirmation that he/she is an eligible elector of the District. *§32-1-806(2), C.R.S.*

An eligible elector for a special District election is a person who is **registered to vote** in the State of Colorado **and is either:**

- a. **A resident** within the special District boundaries or area to be included within the special District boundaries at least thirty (30) days prior to Election Day; **or**
- b. **The owner (or the spouse of the owner) of taxable real or personal property** situated within the special District boundaries or areas to be included within the special District boundaries. *§32-1-103(5)(a) and (b), C.R.S.*

A person who is obligated to pay taxes under a contract to purchase taxable property situated within the boundaries of the special District or area to be included within the special District boundaries is considered an owner for the purposes of 10.b. above.

The property owner must be a natural person, not a corporation, trust, partnership, etc.

### 11. Transferring Property to Qualify Someone as an Eligible Elector:

No person shall take or place 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, or to fill a vacancy on a Board, or to become a candidate for director in a special District election except under the following circumstances:

- a. A vacancy exists on the Board and no eligible elector files a letter of interest in filling such position within ten (10) days after publication of a notice of such vacancy; **or**
- b. There are more than ten (10) eligible electors in a special District organizational election and, on or after the second day before the deadline for filing the self-nomination and acceptance forms, there are less candidates than the number of director offices to be voted upon at such election; **or**



- c. There are less than eleven (11) eligible electors as of any date before a special District organizational election; or
- d. In a regular election, on or after the day after the deadline for filing self-nomination and acceptance forms, there are fewer candidates than the number of director offices to be voted upon at such regular election. *§32-1-808(2)(a), C.R.S.*

**12. Provisional Ballots:**

A provisional ballot may be cast by an elector who:

- a. Appears at a polling place to vote and does not show identification.
- b. Does not provide a copy of his/her identification with a voted mail or mail-in ballot if required because such elector is a first-time voter who registered to vote by mail and did not provide identification with such registration application; then the mailed in ballot shall be considered provisional.
- c. Requests to vote and whose right to vote was challenged, but the elector refused to answer the questions asked or refused to sign the challenge form or take the oath as required by law.

Except for mailed in ballots, an elector casting a provisional ballot shall complete and sign a provisional ballot affidavit and seal the voted ballot in a provisional ballot envelope. No elector shall be denied the right to cast a provisional ballot in any election.

The Designated Election Official shall attempt to verify that an elector who cast a provisional ballot is eligible to vote. If the elector signs the provisional ballot affidavit, the ballot shall be counted if the Designated Election Official determined the elector was eligible to vote in the election. If the elector's eligibility cannot be verified, the ballot shall not be counted. Provisional ballots must be kept separate from all other ballots and counted separately. If twenty-five (25) or more provisional ballots are cast and counted, the results of such count shall be reported separately. If fewer than twenty-five (25) provisional ballots are cast and counted, the results

shall be included in the results of regular voting. Votes cast by provisional ballot shall not be included in any unofficial results reported, only as part of the official canvass.

**13. Ballot Certification:**

No later than sixty (60) days prior to an election, the Designated Election Official must certify the content of the ballot. For coordinated November elections, the certification must be delivered to the County Clerk and Recorder of each County that has territory in the District. *§1-5-203(3)(a), C.R.S.*

For a regular election, the ballot shall include the names of each candidate who filed a valid self-nomination and acceptance form. The order of the names on the ballot shall be determined by lot drawing. Each candidate shall be notified of the time and place of the lot drawing. *§1-5-406, C.R.S.*

**14. Election Returns and Canvass Board:**

For polling place elections, upon the close of the polls on election day, (unless Counting Judges have been appointed, then as soon as 8:00 a.m. on election day), the Election Judges shall count the votes cast. For mail ballot elections, counting of the mail ballots may begin fifteen (15) days prior to the election. The Election Judges shall also issue a certification of election results and submit it to the Designated Election Official. *§§1-7-305, 1-7-601, 1-7-701 and 1-7.5-107.5, C.R.S.*

At least fifteen (15) days prior to an election that is not a coordinated election, the Designated Election Official shall appoint at least one Board member and at least one eligible elector who is not a Board member to assist the Designated Election Official in canvassing the votes. For coordinated elections, the Canvass Board shall be appointed in accordance with the Intergovernmental Agreement between the governing bodies holding the election. Within seventeen (17) days after the election, the Canvass Board must meet to canvass the votes and issue the Official Abstract of Votes Cast. Each member of the Canvass Board, except District Board members, shall receive a minimum fee of \$15 for each day that person is acting in the capacity of a member of the Canvass Board. Each member of the Canvass Board shall first take an oath. *§§1-10-201, 1-10-203(1), C.R.S.*

The Designated Election Official shall notify the candidates of their election to office. The results of the

election shall be certified to the Division of Local Government within thirty (30) days after the election; along with the certification, the District shall also provide the business address and telephone number of the District, and the name of a contact person. *§§1-11-103 and §32-1-104(1), C.R.S.*

For debt authorization elections, the election results must be certified within forty-five (45) days after the election to the Board of County Commissioners of each county in which the District is located or to the governing body of the municipality that approved the Service Plan, and to the Division of Securities. *§32-1-1101.5(1), C.R.S.*

The Board shall preserve all sealed ballots, election materials and records for a period of at least twenty-five (25) months after the election or until the time has expired for which the records are needed for any contest proceeding, whichever is later. *§1-7-802, C.R.S.*

#### **15. Cancellation:**

If the only matter before the electors is the election of Directors and if at the close of business on the 63<sup>rd</sup> day prior to the date of the regular election, there are not more candidates than offices to be filled, including candidates filing affidavits of intent, the election may be cancelled by the Designated Election Official if so instructed by resolution of the Board. The Designated Election Official shall declare the candidates elected to the Board. Notice of the cancellation must be published one time prior to the election and posted at each polling place of the District and in the offices of the County Clerk and Recorder for each county in which the District is located, and in the office of the Designated Election Official. A copy of the notice shall be filed with the Division of Local Government. The candidates must be notified that the election was cancelled and that they were elected by acclamation. *§1-5-208, C.R.S.*

If the only matter before the electors is the consideration of ballot issue(s) or ballot question(s), the Board may cancel the election no later than twenty-five (25) days prior to a coordinated November election or at any time prior to any other election. Notice of the cancellation must be published and posted as indicated above. *§§1-5-208(2) and (6), C.R.S.*

No election may be cancelled in part. *§1-5-208(4), C.R.S.*

#### **16. Directors Take Office:**

The Designated Election Official shall notify the candidates of their election to office. After the oath of office and any required bond are filed with the District Court having jurisdiction over the special District, the Division of Local Government, and the County Clerk and Recorder, the Designated Election Official shall make a formal certificate of election for each person who was elected and shall deliver the certificate to that person. *§1-11-103(1) and 32-1-901, C.R.S., and Article XII, §9, Colo. Const.*

The term of office of each newly elected person shall commence at the next meeting of the Board following the election, but no later than thirty (30) days following the survey of returns and upon the signing of an oath and posting of a bond.

If the election was cancelled, the term of office of the persons declared elected shall commence at the next meeting of the Board following the date of the election, but no later than thirty (30) days following the date of the election and upon the signing of an oath and posting of a bond. *§1-1-202, C.R.S.*



**I. Election Calendar:**

DATE	SUMMARY
To initiate election process	Adopt Election Resolution.
100 days prior	Notify County Clerk and Recorder (“CCR”) of participation in November coordinated election.
90-75 days prior to regular election	Publish Call for Nominations one time.
70 days prior	Enter into Intergovernmental Agreement with CCR for November coordinated election.
67 days prior to regular election	File self-nomination and acceptance forms with Designated Election Official (“DEO”).
64 days prior to regular election	File affidavit of intent to be a write-in candidate with DEO.
63 days prior, by close of business	Regular election may be cancelled if there are no more candidates than positions to be filled, and there are no ballot issues or ballot questions.
60 days prior	<p>Certify ballot content. Such certification shall be to the CCR for November coordinated elections.</p> <p>DEO of regular election files copies of self-nomination and acceptance forms and affidavits of intent to be a write-in candidate with Secretary of State.</p>
55 days prior	File proposed election plan for conducting the mail ballot election with the Secretary of State.
Friday before 45th day prior	Deadline for acceptance of written comments for or against a TABOR ballot issue.
45 days prior	<p>Appoint election judges, certify list of election judges and mail acceptance form to each person appointed.</p> <p>Earliest date to conduct election judge training.</p>
42 days prior	For November coordinated election, the DEO shall deliver the District’s TABOR Notice to the CCR.
40 days prior	<p>For elections not conducted in November, overlapping special districts conducting a ballot issue election shall confer regarding the preparation of the TABOR Notice and enter into an agreement for the preparation and mailing of the TABOR Notice to the addresses of all registered electors in the overlapping area.</p> <p>The DEO shall order the voter registration and property owners lists.</p> <p>The Secretary of State shall approve or disapprove the written plan for the conduct of a mail ballot election.</p>
30 days prior	<p>Mail TABOR Notice to address of each active registered elector of District.</p> <p>CCR shall certify and deliver an initial voter registration list.</p> <p>County Assessor shall certify and deliver an initial list of all recorded owners of taxable real and personal property within the District.</p> <p>DEO shall have printed ballots available.</p>
25 days prior	Establish polling places (for other than November coordinated elections).
22 days prior	Begin mailing to each active eligible elector a mail ballot package. Mail ballots shall also be made available at the DEO’s office for eligible electors.

**I. Election Calendar Continued:**

<p>20 days prior</p>	<p>Publish Notice of Election one time. Also post a copy of the Notice in a conspicuous place in the DEO's office until two days after the election. Mail copy of Notice of Election to the CCR in each county in which the District is located.</p> <p>CCR shall certify supplemental or complete voter registration list.</p> <p>County Assessor shall certify supplemental or complete property owners list.</p> <p>For debt obligation elections, post notice of additional financial information on District's website or in chief administrative office of the District if the District has no website.</p> <p>Post sign at each polling location.</p>
<p>18 days prior</p>	<p>Deadline for mailing mail ballot packages.</p>
<p>15 days prior</p>	<p>If appropriate, mail voter information card to electors concerning the election.</p> <p>Appoint Canvass Board.</p> <p>Counting of mail ballots may begin.</p>
<p>7 days prior</p>	<p>Deadline for filing application for mail-in ballot if ballot is to be mailed to elector.</p> <p>Deadline for requesting replacement mail ballot if ballot is to be mailed.</p>
<p>Friday preceding the election</p>	<p>Deadline for filing applications for mail-in ballot if the ballot is not to be mailed to elector.</p>
<p>Election Day</p>	<p>Counting judges may begin counting at 8:00 a.m.</p> <p>As soon as the polls close, receiving judges may proceed to count the ballots. Judges shall not adjourn until the counting is completed.</p>
<p>No later than 17 days after election</p>	<p>For elections not coordinated by the County, the Canvass Board shall meet, survey the returns, and issue the Official Abstract of Votes Cast.</p> <p>For November coordinated elections, County Canvass Board shall finalize election results.</p>
<p>No later than 30 days after election</p>	<p>Certify election results to the Division of Local Government.</p> <p>Newly elected directors take oath of office.</p>
<p>No later than 45 days after</p>	<p>If a debt authorization election was conducted, file election results with the Board of County Commissioners or the municipality that approved the Service Plan and with the Division of Securities.</p>

## **J. Campaigning:**

Under the Fair Campaign Practices Act *Article 45 of Title 1, C.R.S.*, Districts may not make contributions or contributions in kind to campaigns involving the nomination, retention, or election of any person to any public office, or to urge electors to vote in favor of or against any issue before the electorate.

A Board member may expend not more than \$50 of District funds on letters, telephone calls, or other activities incident to making statements or answering questions concerning the issue.

Districts may, however, expend public monies or make contributions in kind to dispense fair and balanced information on any issue of official concern before the electorate. This information must be factual, must include arguments both for and against the proposal, and cannot contain a conclusion or opinion in favor of or against any issue addressed.

The Board is permitted to adopt a resolution of advocacy on any ballot issue or referred measure, and report the adoption of the resolution by customary means other than paid advertising.

The statutes do not prohibit a public employee or Board member from working on a campaign or speaking out on an issue on his or her own time, or spending his or her own funds to urge electors to vote in favor of or against any issue before the electorate.

The statutes also restrict the activities of campaign committees and require the filing of certain reports.

## Chapter IV Service Plans

### A. Conformance:

The District must conform, so far as practicable, to its adopted Service Plan. *§32-1-207(1), C.R.S.* (For Districts formed prior to 1965, a Statement of Purpose substitutes for a Service Plan. *§32-1-208, C.R.S.* The Colorado Court of Appeals has determined that provisions of a service plan stating that certain facilities “will” be built obligate the District to build those facilities, unless the District can demonstrate that compliance with the service plan is no longer “practicable.” *Plains Metropolitan District v. Ken-Caryl Ranch Metropolitan District, 250 P.3d697 (Colo. App. 2010)(cert. denied).*

#### \*Note\*

Notice of a proposed District activity, published one time in a newspaper of general circulation, restricts certain injunctive actions which may be brought against the District for material departures from the Service Plan, unless such action is brought within forty-five (45) days after publication of such notice. Such notice shall also be filed with the District Court and Board of County Commissioners or governing body of the municipality which approved the Service Plan. *§32-1-207(3)(b), C.R.S.*

### B. Amendment and Modification:

The Service Plan may, from time to time, be amended to conform with changed circumstances or conditions of the District.

Material modifications of the Service Plan may be made only by petition to and approval by the Board of County Commissioners or governing body of the municipality that approved the original Service Plan, in substantially the same manner as is provided for the approval of the original Service Plan, except that the processing fee shall not exceed \$250. *§32-1-207(2), C.R.S.*

The following is a partial list of what may constitute a “material modification.” *§32-1-207(2), C.R.S.:*

1. Any addition to the types of services provided;
2. A decrease in the level of services;

3. A decrease in the financial ability of the District to discharge indebtedness;
4. A decrease in the need for organized service in the area; or
5. An inclusion of property into a new county or city, if so determined by the Board of County Commissioners or governing body of the municipality.

### C. Transfer of Authority to Annexing Municipality:

If a District originally approved by a Board of County Commissioners becomes wholly contained within a municipality, the District may petition the municipality to accept designation as the approving authority of the District. If the municipality adopts a resolution of approval, all powers and authority shall be transferred from the Board of County Commissioners to the governing body of the municipality. *§32-1-204.7, C.R.S.*

## Chapter V Financial Matters

### A. Fees, Rates, Tolls, and Charges:

The Board has the power to fix, and from time to time increase or decrease fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the District. *§32-1-1001(1)(j), C.R.S.* However, fees and charges must be justified either through internal evaluation of the District's costs for providing such services, programs or facilities, or through the determination of an outside consultant hired by the District that the fees are reasonable. *Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 687 (1994).* Additional restrictions exist on what fees can be charged by fire protection Districts. *§32-1-1002(1)(e), C.R.S.* Districts providing domestic water or sanitary sewer services directly to residents and property owners must consider the fees, rates, etc. at a public meeting held at least thirty (30) days after giving notice of such meeting to the District's customers. *§32-1-1001(2)(a), C.R.S. (H.B. 13-1186).*

In some instances, a charge for the availability of water or sewer service may be implemented. "Availability of service" fees involve some complex legal issues. *§32-1-1006(1)(h), C.R.S.*

For further discussion regarding penalties and disconnection, see *Collection of Delinquencies and Assessment of Penalties* in Section C below.

Any land development charges imposed as a condition of approval (i.e., tap fees) must be deposited in an interest-bearing account which clearly identifies the category, account, or fund of capital expenditure for which such charge was imposed. Land development charges, average annual interest rate on each account, and total amount disbursed from each account must also be posted on the District's web site, if any, at least once annually. *§29-1-803, C.R.S.*

### B. Mill Levy:

The Board shall fix a rate of levy of taxes, and shall certify that rate to the Board of County Commissioners by no later than December 15 of each year. *§32-1-1201, C.R.S.*

Annual increases in general operating tax revenue are limited by both Article X, Section 20 of the Colorado

Constitution ("TABOR") and the 5.5% statutory limitation, *§29-1-301, C.R.S.*, unless a greater increase is approved at an election or, in some cases, by the Division of Local Government.

The Board may assess a different water or sewer mill levy (or water or sewer service charge) against different properties within the District as long as the basis for differentiation is according to facilities or services furnished and is uniform among property owners similarly situated. Such differentiation must be established to avoid violation of the Constitutional provision of equal taxation. *§32-1-1006(1)(b), C.R.S.*

### C. Collection of Delinquencies and Assessment of Penalties:

All unpaid fees, rates, tolls, penalties and charges constitute a perpetual lien against the property served. *§32-1-1001(1)(j), C.R.S.* Such lien is entitled to priority over other encumbrances such as prior recorded deeds of trust (but not tax liens). *Wasson v. Hogenson, 583 P.2d 914 (Colo. 1978); North Washington Water and Sanitation District v. Majestic Savings and Loan Association, 594 P.2d 599 (Colo. 1979).*

A penalty may be assessed against all delinquencies in payment, together with the assessment of interest not to exceed 1% per month. Service may be discontinued against any property whose owner is delinquent in the payment of fees or charges. *§§31-35-402(1)(f) and 32-1-1006(1)(d), C.R.S.*

Prior to disconnecting service, due process requires that certain procedures be followed, including notice and an opportunity for a hearing before a designated employee or the Board. *Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1 (1978).* The notice must be in writing and provided to the property owner and the property address (if different from the owner's address) prior to disconnecting service and must state the amount of the delinquency, the date of shut off, and that the customer has the right to a hearing to protest the threatened termination of service. If the customer then requests a hearing, directions to the hearing location must be provided.

For water, sewer, or water and sewer services only, in addition to disconnection of service (after proper notice) or foreclosure, the District may certify delinquent accounts to the County Treasurer for collection along with taxes. Such

accounts may then be collected by the County, and the proceeds distributed to the District. *§32-1-1101(1)(e), C.R.S.*

Districts are allowed to add delinquency charges to delinquent fees and assessments, but the amounts are limited by statute. The limitations are spelled out in the Local Government Delinquency Charges statute. *§§29-1-1101, et seq., C.R.S.*

Small claims courts may also provide an alternative and cost effective means by which to collect delinquent accounts.

#### **D. Budget:**

A District must adopt an annual budget prior to certifying the District's mill levy. *§§29-1-103(1) and 29-1-108(2), C.R.S.* Adoption of the budget must be considered at a public hearing. *§29-1-108(1), C.R.S.*

The Board must designate a qualified person who shall prepare the budget and submit it to the Board on or before October 15 of each year. *§29-1-105, C.R.S.* The County Assessor shall certify the District's assessed valuation by August 25 of each year. *§39-5-128(1), C.R.S.* Any changes to assessed valuation must be provided by the County Assessor by December 10 of each year. *§39-1-111(5), C.R.S.*

Upon receipt of the proposed budget, the Board shall publish notice of the following one time in a newspaper of general circulation: (i) the date, time and place of a budget hearing; (ii) that the budget is open for public inspection and location where budget can be reviewed; and (iii) that interested parties may file objections any time prior to final adoption. *§29-1-106(1), C.R.S.* If the District's proposed budget is \$50,000 or less, however, such notice shall be posted in three public places within the District in lieu of publication. *§29-1-106(3), C.R.S.*

A certified copy of the adopted budget and budget message must be filed with the Division of Local Government no later than thirty (30) days following the beginning of the fiscal year of the budget (i.e., no later than January 30). *§29-1-113, C.R.S.*

Analyses of the following components (both short and long term) will be useful in preparation of the District's budget under TABOR: growth calculation, spending, revenues, emergency reserves and refunds.

#### **E. Appropriation:**

Before the mill levy is certified, the District must adopt a resolution adopting the budget and making appropriations for the budget year. The amounts appropriated shall not exceed the budgeted expenditures. *§29-1-108(2), C.R.S.* Any action or expenditure made beyond the appropriated sum is considered invalid and void. *§29-1-110, C.R.S.* However, the amount of appropriated funds may be supplemented or adjusted during the year by adoption at a public hearing of a Resolution amending the budget. If the adjusted budget exceeds \$50,000, notice of the public hearing must be published one time; otherwise, notice must be posted in three public places within the District boundaries. A certified copy of the adopted Resolution must be filed with the Division of Local Government. *§29-1-109(c), C.R.S.*

#### **F. Donations or Gifts by Districts:**

Local governments are not permitted to make any donation or grant to, or in aid of, a private individual or entity without receiving value in return. However, "value" is a relative term and can be determined many ways. For example, donating a round of golf to a charity for its silent auction can have marketing and public relations value for a District. *Art. XI, Sect. 2, Colo. Const.*

#### **G. Public Funds:**

##### **1. Investments:**

A District may invest public funds in an authorized investment vehicle. *§24-75-601, et seq., C.R.S.*, subject to rating categories and maturity dates. Types of available investments include:

- a. United States Treasury obligations;
- b. Certain United States Agency obligations;
- c. Repurchase agreements collateralized by appropriate United States Treasury or Agency obligations; and
- d. Colorado local government investment pools.

Refer to *§24-75-601, et seq., C.R.S.* for other legal investments.

## 2. Public Deposit Protection Act (“PDPA”):

The PDPA §§11-10.5-101, *et seq.*, C.R.S. requires that deposits of public funds in banks or savings and loan associations may only be made in “eligible public depositories” which have been designated by the State. §11-10.5-111(1), C.R.S.

The “official custodian” (whoever has authority or control of public funds) must do the following:

- a. Inform the depository that District funds are subject to the PDPA;
- b. Maintain documents or other verification necessary to identify the public funds which are subject to the PDPA; and
- c. Apply to the State for an assignment of an account number for all accounts established with an eligible public depository.

It is a misdemeanor for an official custodian or bank official to violate the provisions of the PDPA. §§ 11-10.5-111(4)(b) and 11-10.5-111(4)(c), C.R.S.

## H. TABOR:

TABOR imposes tax, debt, revenue and spending limitations. All increases in taxes and other revenue subject to the spending limit are limited to a “growth and inflation factor,” unless otherwise approved by District voters. TABOR applies to special Districts, but “Enterprises” are excluded from some TABOR provisions (See CHAPTER XV).

## I. Subdistricts and Special Improvement Districts (“SIDs”):

Subdistricts and SIDs are special financing tools for financing public improvements that benefit a specific area of the District. Although they operate similarly, a subdistrict is organized as a separate governmental unit, while a SID exists only as a geographic area within which improvements are constructed and cannot operate as an independent governmental entity separate from the special District. § 32-1-1101(1)(f)(I), C.R.S.; § 32-1-1101.7, C.R.S.

Subdistricts may impose an additional levy on the properties within the subdistrict to pay for the acquisition, operation and maintenance of services, facilities and

programs within the subdistrict and to pay for subdistrict debt or other financial obligations. Voter approval is required for the subdistrict’s tax rate, any general obligation debt or multi-year financial obligation. §32-1-1101(1.5)(d), C.R.S.

A SID may impose assessments on properties within the SID, but such assessments must be equitable based on the benefit received by the properties, such as based on the frontage, area or zone of the property benefitting from the improvement. §32-1-1101.7(2), C.R.S. Costs of improvements within a SID are often financed through special assessment bonds issued by the special District on behalf of the SID. These bonds must be approved by the majority of the eligible electors, which are either the electors of the District or the electors of the SID, as determined by the District’s Board. §32-1-1101.7(3)(g), C.R.S.

## J. Sales Tax for Road and Transportation Purposes:

A Metropolitan District with street improvement, safety protection, or transportation powers in its service plan may impose a sales tax for transportation projects, with voter approval, and so long as the District’s territory does not overlap any municipality. A Metropolitan District with these powers may also join as a participant in Regional Transportation Authorities, along with cities and counties, for regional transportation projects. §32-1-1106, C.R.S.



## Chapter VI Boundary Issues

### A. Inclusion:

#### 1. Petition for Inclusion:

The inclusion process (sometimes erroneously referred to as “annexation”) is initiated by a petition for inclusion which may be brought by one of the following three means. *§32-1-401, C.R.S.:*

- a. The fee owner(s) of 100% of any real property capable of being served by the District may file with the District Board a petition for inclusion of that property. *§32-1-401(1), C.R.S.*
- b. A petition for inclusion may be filed by the lesser of 20% or 200 of the taxpaying electors within a specified area. *§32-1-401(2)(a)(I), C.R.S.* (This alternative is seldom used since the statutes now provide that the Board may initiate the process.)
- c. The Board of Directors may adopt a resolution proposing the inclusion of a specific area. *§32-1-401(2)(a)(II), C.R.S.* This is the most common method of initiating inclusion of an area with many property owners. No single tract or parcel constituting more than 50% of the total area to be included may be included without the consent of the owner of that parcel.

#### 2. Public Hearing:

The Board shall hear the petition or resolution at a public meeting after publication of notice of the hearing and, in the case of inclusion by election as discussed below, mailing of notice to all property owners. *§§32-1-401(1)(b) and 32-1-401(2)(b), C.R.S.*

#### 3. Decision of Board:

The Board shall grant or deny the petition, or adopt the resolution, in whole or in part, and with or without conditions. *§§32-1-401(1)(c) and 32-1-401(2)(c), C.R.S.*

The Board shall not grant the petition if a municipality or county has submitted a written objection to the inclusion and can provide the property with adequate service within a reasonable time and on a comparable basis. *§§32-1-401(1)(c) and 32-1-401(2)(c), C.R.S.*

If the petition is granted, the Board shall make an order to that effect and file the same with the clerk of the District Court requesting issuance of a final order of inclusion. *§32-1-401(1)(c), C.R.S.*

#### 4. Election:

If the petition was submitted by the lesser of 20% or 200 of the taxpaying electors, or initiated by the Board, upon granting of the petition or finally adopting the Board resolution, the Board shall make an order to that effect and file it with the court. The court shall direct that the question of inclusion be submitted to the eligible electors of the area to be included. Any election shall be held within the area sought to be included. *§32-1-401(2)(d), C.R.S.*

The timing of an inclusion election may be restricted by TABOR.

#### 5. \*Note to Fire Protection Districts:\*

The owner of taxable personal property (i.e., leasehold interests in improvements and major equipment) that is situated on real property which has been excluded from a fire protection District may petition to have the personal property included in the fire District by following a series of steps including filing a petition, a public meeting after published notice, approval of the petition, an order made by the board, and a court order. *§32-1-401.5, C.R.S.*

### B. Exclusion:

#### 1. Petition for Exclusion:

Except in the cases of fire protection Districts or exclusions involving a municipality (both discussed below), the exclusion (erroneously also referred to as “de-annexation”) process can only be initiated by a petition for exclusion submitted by the fee owner(s) of 100% of any real property in the District. *§32-1-501(1), C.R.S.* The petition is to be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. *§32-1-501(1), C.R.S.*



**2. Public Hearing:**

The Board shall hear the petition for exclusion at a public meeting after publication of notice of the hearing. *§32-1-501(2), C.R.S.*

**3. Decision of Board:**

The Board shall order the petition granted or denied after consideration of the following factors:

- a. The best interests of the property seeking exclusion, the District, and the County;
- b. The relative cost/benefit analysis to the property;
- c. District’s ability to provide service to all property within the District, including the property to be excluded;
- d. Cost for which the District is able to provide service compared to that of other entities in the surrounding area;
- e. Effect that denying the petition would have on employment and other economic conditions within the District and surrounding area;
- f. Economic impact on the District, the region and the State if the petition is denied or granted;
- g. Whether an economically feasible alternative service is available; and
- h. Additional cost to be levied on non-excluded property if the petition is granted. *§32-1-501(3), C.R.S.*

A public election is not required or allowed; the determination is to be made by the Board. *§32-1-501(4)(a), C.R.S.* The Board shall file with the court a certified copy of the Board Order excluding the property, and the court will then enter an Order of Exclusion based upon the decision of the Board. *§32-1-501(4)(b), C.R.S.* A denial of any petition for exclusion by the Board may be appealed to the Board of County Commissioners. *§32-1-501(5)(b), C.R.S.* The Board of County Commissioners shall consider all the factors set

forth above and make its determination based on the record developed at the hearing before the District Board. The decision of the Board of County Commissioners may be appealed to the court, which shall consider all the factors set forth above in rendering a decision based on a review of the record. *§32-1-501(5)(c), C.R.S.*

**4. Exclusions Involving a Municipality:**

A municipality wherein territory within a District is located, a District with territory within a municipality, or 50% of property fee owners in an area of any municipality in which territory within a District is located may petition the court for exclusion from the District. *§32-1-502(1), C.R.S.* In the case of unilateral exclusion by a municipality, the District may be entitled to compensation.

Exclusion of property within the boundaries of a municipality can be a complicated and involved process.

**5. Exclusions from a Fire Protection District (and Inclusion into Another):**

A fire protection District may alter its boundaries through exclusion of a specific area if the area will be provided with the same service by another fire District and that District has agreed by resolution to include the property. In some cases, an election must first be held within such area. *§32-1-501(1.5), C.R.S.*

**6. Outstanding Indebtedness:**

Property that is excluded from the District remains subject to any existing bonded indebtedness. *§32-1-503, C.R.S.* The court Order of Exclusion must state the amount of the existing indebtedness and the date such indebtedness is scheduled to be retired. *§32-1-501(4)(d), C.R.S.*

**7. \*Note to Health Service Districts:\***

The foregoing discussion of the exclusion process does not apply to health service Districts in the same manner.

**C. Consolidation:**

**1. Consolidation Resolution:**

If a District wishes to consolidate in its entirety or only specific services with another District, the Board shall

adopt a consolidation resolution which sets forth the following:

- a. That each of the consolidating Districts may be operated effectively and economically as a consolidated District;
- b. That the public health, safety, prosperity, and general welfare of the inhabitants of the District initiating the consolidation will be better served by the consolidation;
- c. Proposed name of the consolidated District;
- d. The Districts and services of those Districts to be consolidated;
- e. Whether the consolidated District will have a five- or seven-member board;
- f. Any conditions attached to consolidation; and
- g. The time limit within which the included Districts must approve the consolidation resolution, which must be no later than six months after the date of such resolution. *§32-1-602(2)(a), C.R.S.*

**2. Concurring or Rejecting Resolution:**

The Districts subject to the proposed consolidation each shall file a concurring or rejecting resolution with the initiating District. *§§32-1-602(2)(b) and 32-1-602(2)(c), C.R.S.*

**3. Submission to Board of County Commissioners and District Court:**

The initiating resolution, together with all concurring resolutions, shall be filed with the Board of County Commissioners and the District Court. Usually, very detailed pre-consolidation agreements are executed, and Service Plan amendments may be necessary.

**4. Hearing:**

The District Court shall hold a hearing not less than thirty (30) days nor more than forty (40) days after the resolutions are filed with the Court. Notice of the filing of

the resolutions and the hearing shall be published and written notice shall be provided to any municipality entitled. Any eligible elector, fee owner of real property, or county or municipality having territory within any special Districts involved in the proposed consolidation may file a petition objecting to the consolidation. The Court shall determine whether, in the general public interest, the property subject to objection should be excluded or included in the proposed consolidated District. *§32-1-602(2)(d), C.R.S.*

If the consolidating resolution and concurring resolutions were properly filed, and the consolidating Districts have proceeded in accordance with statute, the Court will order an election. *§32-1-602(2)(e), C.R.S.*

**5. Election:**

An election will be conducted within each consolidating District. The election shall be held at the next regular or special election date. Notice of the consolidation election must be published within each consolidating District. The electors must approve not only the question of consolidation but also any financial obligation to be assumed as a result of the consolidation. *§32-1-602(2)(e), C.R.S.*

**6. Procedure after Consolidation Election:**

Upon approval of the consolidation by a majority of the eligible electors voting in each consolidating District's election, the members of the Board of each consolidating District shall constitute the organizational Board of the Consolidated District. *§32-1-603(1), C.R.S.*

Within six months after the date of the consolidation election, the organizational Board shall:

- i. Determine the persons who shall serve on the first Board of Directors of the Consolidated District from those persons elected to the Boards of the Consolidating Districts, and determine each of their terms of office;
- ii. If the Board is to have seven Directors, divide the Consolidated District into seven Director Districts and determine the Director who shall represent each Director District; and

- iii. Determine the amount of the bond for each Director and Treasurer.  
*§32-1-603(2), C.R.S.*

After the organizational Board has made such determinations, a petition stating the name of the consolidated District, name and address of each member of the first Board and term thereof, amount of the surety bond (together with copies of the bond) and a description of the director Districts, if any, shall be filed with the Court. *§32-1-603(3), C.R.S.*

Upon filing the petition, the Court shall issue an Order creating the Consolidated District, which shall be recorded with the County Clerk and Recorder in each county wherein the Consolidated District is organized. Copies of the recorded Order shall be filed with the County Assessor and Division of Local Government. *§32-1-603(4), C.R.S.*

#### **D. Intergovernmental Agreements:**

See also Chapter XII, Intergovernmental Agreements, regarding the creation of Water Authorities, Recreation Authorities and Fire Authorities.

#### **E. Service Outside District Boundaries:**

Districts which desire to extend water or sanitation services into a county that has not approved the District's service plan may, depending on the circumstances, need to seek approval from that county's board of county commissioners. *§32-1-207(2), C.R.S.*

Districts providing domestic water or sanitary sewer services to customers outside the District boundaries may fix or increase fees, rates, tolls, penalties, or charges for such services only after consideration of the action at a public meeting held at least thirty (30) days after providing notice to the customers of such services. The notice must state the date, time, and place of the meeting at which the action is being considered. *§32-1-1001(2)(a), C.R.S. (H.B. 13-1186).*

## Chapter VII Conflict of Interest

### A. Disclosure Required:

Any Director shall disqualify himself/herself from voting on any issue in which he/she has a conflict of interest, unless such Director has disclosed the conflict of interest as required by law to the Secretary of State and to the Board, *§32-1-902(3)(b), C.R.S.*, and then only to vote if his/her participation is necessary to obtain a quorum or otherwise enable the Board to act. *§24-18-109(3)(b), C.R.S.*

If the Director does not vote, he/she shall also refrain from attempting to influence the decisions of other members of the Board in voting on the matter. *§24-18-109(3)(a), C.R.S.*

A Director is guilty of failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, without having given seventy-two (72) hours' actual advance written notice to the Secretary of State and to the District Board of the existence of a known potential conflicting interest. *§18-8-308(1), C.R.S.* Failure to disclose a conflict of interest is a class 2 misdemeanor. *§18-8-308(3), C.R.S.*

### B. Proscribed Acts Constituting a Conflict of Interest:

A potential conflict of interest exists when the Director is an executive officer, or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction. *§18-8-308(2), C.R.S.*

A District Board member, as a local government official (elected or appointed), or a District employee, shall not:

1. Disclose or use confidential information acquired in the course of his/her official duties in order to further his/her personal financial interests.
2. Accept gifts of substantial value or of substantial economic benefit tantamount to a gift of substantial value, which would tend to improperly influence a "reasonable person" in his/her public position to depart

from the faithful and impartial discharge of his/her public duties or which he/she knows or which a reasonable person in his/her position should know under the circumstances is primarily for the purpose of rewarding him/her for official action he/she has taken.

3. Engage in a substantial financial transaction for his/her private business purposes with a person whom he/she inspects or supervises in the course of his/her official duties.
4. Perform an official act directly and substantially affecting to its economic benefit, a business or other undertaking in which he/she either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.
5. Be interested in any contract made in his/her official capacity or by any body, agency, or board of which he/she is a member or employee.
6. Be a purchaser at any sale or vendor at any purchase made by him/her in his/her official capacity. *§§24-18-104, 24-18-109, 24-18-201 and 24-18-202, C.R.S.*

The following exceptions exist which are not considered to be conflicts of interest:

1. A Director holding a minority interest in a corporation contracting with the District is not considered "interested" in such contract. *§24-18-201(1)(a), C.R.S.*;
2. Contracts in which the Director has disclosed a personal interest and has not voted thereon; and
3. A Director may vote, notwithstanding any other prohibition, if participation is necessary to obtain a quorum or otherwise enable the Board to act, and if the Director complies with voluntary disclosure procedures. *§24-18-109(3)(b), C.R.S.*

\*Note\* All of these exceptions must be very carefully scrutinized for legal compliance purposes. Perhaps no area offers greater potential exposure to liability than the area of conflicts of interest. Before a Director takes any action which may involve a potential conflict of interest, all legal implications as well as the policy implications and appearance of impropriety should be considered.

### **C. Guides to Conduct Regarding Ethical Principles:**

The following principles are intended as guides to conduct; they do not constitute violations of the public trust or employment in local government unless circumstances would otherwise so indicate:

1. A local government official or employee should not acquire or hold an interest in any business or undertaking which he/she has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the local government agency over which he/she has substantive authority.
2. A local government official or employee should not, within six (6) months following the termination of his/her office or employment, obtain employment in which he/she will take direct advantage, unavailable to others, of matters with which he/she was directly involved during his/her term of employment.
3. A local government official or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he/she has a substantial financial interest in a competing firm or undertaking. *§24-18-105(4), C.R.S.*

### **D. Conflicts Involving Developer Districts:**

A director who owns undeveloped land constituting at least 20% of the District's territory must disclose such ownership by giving seventy-two (72) hours advance written notice to the Secretary of State and the Board before each meeting of the Board, and such disclosure

must be entered in the minutes. "Undeveloped land" means real property which has not been subdivided or on which no improvements have been constructed, excluding dedicated parks, recreation areas or open spaces. *§32-1-902(4), C.R.S.*

No contract for work or material including a contract for services, regardless of amount, may be entered into between a District and a Board member or a person owning 25% or more of the territory within the District unless notice for bids is published and the Board member or owner submits the lowest responsible and responsive bid. *§32-1-1001(1)(d)(II), C.R.S.*

### **E. Effect of Existence of Potential Conflict of Interest:**

Failing to disclose a potential conflict of interest is a criminal misdemeanor and could result in prosecution.

Any contract, vote or other official act in which a Director had a potential conflict, not cured by disclosure, may result in the avoidance of the act or contract being void.

## Chapter VIII Audits

### A. Mandatory Financial Audit:

Unless the District is exempt, the Board shall cause to be made an annual audit of the financial statements of the District as of the end of each fiscal year, or more frequently if determined by the Board. *§29-1-603, C.R.S.*

The audit report must be submitted to the Board by the auditor by June 30, and filed with the State Auditor within thirty (30) days after the report is received by the District. *§29-1-606, C.R.S.* (See: Filings Schedule in Chapter I of this Manual). If the District has authorized but unissued general obligation debt as of the end of the fiscal year, send a copy of the audit report or a copy of its application for exemption from audit to the Board of County Commissioners for each county in which the District is located, or to the governing body of any municipality that approved the Service Plan.

If required, a request for extension of time to file the audit may be filed with the State Auditor no later than seven (7) months following the end of the fiscal year (July 31<sup>st</sup>). The amount of time requested shall not exceed sixty (60) days. *§29-1-606(4), C.R.S.*

### B. Exemption from Audit:

If neither the District's revenues nor expenditures exceed \$500,000 for the fiscal year, an audit exemption may be sought. To obtain an audit exemption, the District must file an application with the State Auditor within three (3) months of the close of the fiscal year (by March 31<sup>st</sup>).

For Districts with neither revenues nor expenditures exceeding \$100,000, the application must be prepared by a person skilled in governmental accounting. For Districts with revenues or expenditures of at least \$100,000 but not more than \$500,000, the application must be prepared by an independent accountant with knowledge of governmental accounting. *§29-1-604, C.R.S.*

### C. Optional Performance Audits:

In addition to the mandatory financial audit, the Board may determine to prepare additional internal audits in order to more efficiently and effectively perform its duties. Such optional audits may include the following:

#### 1. Investment and Purchasing Procedures:

Such an audit could include a compliance checklist regarding authorized investments, as well as a brief outline of the duties and responsibilities of each Board member and District staff member for investment, purchasing and other handling of District money.

#### 2. Legal Audit:

This should be prepared in concert with the District's legal counsel in order to assure that the District is achieving various mandatory and desirable legal actions.

#### 3. Liability Audit:

A liability audit is often provided by the insurance company, it can locate safety and other liability exposures within the District.

#### 4. Management, Operations and Maintenance Audits:

These audits review procedures for monitoring the effectiveness and efficiency of the tasks performed by the District.



## Chapter IX Liability Issues

### A. Potential Sources of Liability:

#### 1. State Tort Actions:

“Torts” are actions (other than in contract) such as negligence, trespass, and conversion, involving damage to person or property. These actions are covered by the Colorado Governmental Immunity Act. (See below.)

#### 2. Federal Actions:

These actions are beyond the scope of the Colorado Governmental Immunity Act, although an argument does exist that the Act could offer protection from federal claims brought in the State courts.

The most common federal actions are in the areas of deprivation of constitutional or statutory rights (Section 1983 cases), antitrust, securities violations, labor and wage actions, and environmental cases.

#### 3. Contract:

Contract claims are not protected by the Colorado Governmental Immunity Act. *§§24-10-105 and 106, C.R.S.* Public officials, however, are generally not personally liable for the contracts of the governmental entity.

#### 4. Criminal:

The Colorado Governmental Immunity Act offers no protection from criminal actions. Common potential areas of criminal exposure include the following:

- a. Entering into a prohibited transaction;
- b. Failing to disclose conflicts of interest;
- c. Misuse of official information;
- d. Malfeasance; and
- e. Issuing a false certificate or document.  
*(§18-8-406, C.R.S.)*

You may want to consider purchasing crime coverage from the Colorado Special Districts Property and Liability Pool, which covers certain damages and defense costs resulting from a lawsuit for a Director’s alleged wrongful acts while acting in his or her official capacity.

### B. Colorado Governmental Immunity Act:

The Colorado Governmental Immunity Act limits the circumstances under which a public entity or public employee may be liable in state tort actions.

The Act creates immunity for all tortious actions committed by a governmental entity or its employees, except the following:

1. The operation of a public hospital, correctional facility, or jail;
2. The operation of a publicly owned motor vehicle, except emergency vehicles;
3. A dangerous condition of a public building;
4. A dangerous condition of a public highway, road, street or sidewalk;
5. A dangerous condition of any public facility located in any park or recreation area or any public water, gas, sanitation, electrical, power or swimming facility; and
6. The operation and maintenance by a public entity of any public water, gas, sanitation, electrical, power or swimming facility.  
*§24-10-106(1), C.R.S.*

Even for those actions where liability may attach, liability is limited by the Act to \$350,000 for injury to one person in any single occurrence, and \$990,000 for injury to multiple persons in a single occurrence, except that no person shall recover in excess of \$350,000. Such amounts will be adjusted every four (4) years, beginning in 2018, by an amount reflecting the percentage change over a four (4) year period in the Consumer Price Index. *§24-10-114, C.R.S.*

The Act also imposes procedural requirements when filing a claim against the District, its Directors or employees. If those procedures are not followed, a claim may be dismissed. The Act also requires each District to designate

an official, or an office, as its official agent to be served with legal notice of intent to file a claim against the District under the Act. *§24-10-109, C.R.S.*

### **C. Indemnification Resolution:**

A special District has certain duties to indemnify its directors and employees. That indemnification is codified in the Colorado Governmental Immunity Act. *§24-10-110, C.R.S.*

An Indemnification Resolution can indemnify District Directors and employees beyond the protections of the Act. Federal, contract and punitive acts may all be indemnified.

A well-drafted Indemnification Resolution should be upheld by the courts.

### **D. Releases and Waivers:**

Releases and waivers may be used to limit potential liability against the District, its Directors and employees, and also third parties in applicable situations.

For a release or waiver to be valid, there must be an express, knowledgeable assent to such release or waiver. The District must exercise great caution regarding the validity or adequacy of the release or waiver.

A parent may, on behalf of his/her child under the age of eighteen, release or waive the child's prospective claim for negligence, except claims for willful, wanton, reckless or grossly negligent acts or omissions. *§13-22-107(3)-(4), C.R.S.*

### **E. Insurance:**

Insurance is a primary and essential means of protecting the District, its directors and employees. The primary types of insurance are liability, property, workers' compensation, crime coverage, and errors and omissions.

The following methods of insurance could be considered:

#### **1. Standard Insurance Company:**

A qualified insurance person who understands governmental liability should be contacted.

#### **2. Self-Insurance:**

The Governmental Immunity Act permits a special District to adopt a policy of self-insurance. *§24-10-115(2)(a), C.R.S.* The Act imposes procedural requirements, and compliance is mandatory. The fund established for the purposes of self-insurance shall be kept separate from all other District funds, and may only be used to pay operating expenses of the fund and claims made against the District. *§24-10-115(3), C.R.S.*

#### **3. Insurance Pool:**

An insurance pool can be a cost efficient means by which to obtain insurance coverage. The Special District Association of Colorado offers such an insurance pool.

### **F. Constitutional Issues:**

When operating in the public realm, sensitivity to Constitutional issues must be maintained. All Constitutional issues should be discussed with a qualified attorney. Potential areas of Constitutional issues most commonly include the First Amendment rights of free speech, freedom of religion and assembly, Fourteenth Amendment rights of Equal Protection, Fifth and Fourteenth Amendment rights of Due Process, and issues involving the "taking" of private property.



## Chapter X Debt

### A. Authorization:

A special District is expressly authorized by statute to borrow money and incur indebtedness. [§32-1-1001\(1\)\(e\), C.R.S.](#)

### B. Types of Debt:

#### 1. General Obligations:

The full faith and credit of the District, including the general taxing and further borrowing powers, are used to secure the debt.

#### 2. Revenue Obligations:

Specifically identified revenues (not taxes) of the District are used as the source of debt repayment. The bonds may not be paid unless the revenue is available; furthermore, a higher risk will likely result in a corresponding higher interest rate.

#### 3. Enterprise Obligations:

The District may issue revenue bonds through an enterprise. In most cases, the District may create an enterprise if it has bonding capacity and receives less than 10% of its annual revenue in grants from Colorado state and local governments combined. Unlike general obligation and revenue debt, enterprise revenue bonds do not require an election [Art. X, Sect. 20, Colo. Const.](#)

#### 4. Refunding Obligations:

Refunding bonds are used to restructure the payment of an existing debt obligation. Refunding obligations may sometimes be combined with new debt obligations.

#### 5. Lease/Purchase:

A lease-purchase agreement provides that portions of lease payments are applied to the ultimate purchase of certain property. These obligations are dependent upon the District appropriating money each year, and are often secured by the item being purchased. Districts with lease-purchase obligations must comply with audit law reporting

requirements. Properly structured lease-purchase agreements have been held by the Courts to be valid under TABOR. [Board of County Commissioners of Boulder County v. Dougherty, Dawkins, Strand & Bigelow, 890 P.2d 199 \(Colo. App. 1994\)](#). Certificates of Participation (COPS) are a variation of the lease-purchase arrangement.

#### 6. Tax Anticipation Note:

A tax anticipation note is a short-term obligation payable from the receipt of pending tax payments.

#### 7. Bond Anticipation Note:

A bond anticipation note is a short-term obligation issued in anticipation of redemption through the issuance of long-term bonds.

#### 8. Other:

There are other financing options occasionally used, but they generally fit into some variation or combination of the above categories.

### C. Bankruptcy Protection:

For those Districts experiencing financial distress, bankruptcy protection may be available under Chapter 9 of the United States Bankruptcy Code.

### D. Special Requirements:

State statute and TABOR impose certain obligations upon Districts. These include:

1. Conducting a debt authorization election for general obligation or revenue debt. [Art. X, Sect. 20, Colo. Const.](#)
2. Posting of a special three-day notice when issuing or refunding general obligation debt (or consolidating, dissolving, making a contract with a director, filing for bankruptcy, or not making a bond payment). [§32-1-903\(3\), C.R.S.](#)
3. Compliance with Colorado Securities Commission filing and approval requirements.

4. For 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 debt must be certified and sent by registered mail to the board of county commissioners or the governing body of the municipality no later than thirty (30) days before issuing any new general obligation debt. *§32-1-1101.5(1), C.R.S.*
5. File results of a debt authorization election with the Board of County Commissioners or municipality that approved the Service Plan, and with the Division of Securities, within forty-five (45) days after the election. *§32-1-1101.5(1), C.R.S.*
6. File a report of outstanding unrated securities with the Division of Local Government by March 1 of each year. *§11-58-105, C.R.S.*
7. In every fifth calendar year after general obligation debt was approved, the board of county commissioners or governing body of municipalities may require a quinquennial finding of reasonable diligence. *§32-1-1101.5 (1.5), C.R.S.*
8. The District's audit report must include the amount of any authorized, but unissued, general obligation debt as well as current or anticipated plans to issue such debt. *§29-1-605, C.R.S.*

## Chapter XI Public Records

### A. Public Right of Access:

Colorado statutes have established as public policy that all public records should be open for inspection by any person at reasonable times, except as provided by law.

*§24-72-201, C.R.S.*

“Public records” is broadly defined so as to include most documentation maintained by the District and the correspondence of elected officials, including email.

*§24-72-202(6), C.R.S.*

The “official custodian” (the District officer or employee responsible for the maintenance, care and keeping of public records) may establish rules regarding the inspection procedures for such records. *§24-72-203(1)(a), C.R.S.* Such rules are advisable to maintain a manageable order regarding records and inspection.

The person requesting inspection is entitled to copies or printouts of the District’s public records. A fee not to exceed twenty-five cents per standard page, unless actual costs exceed that amount, may be assessed. *§24-72-205(5)(a), C.R.S.* If the copying or printout is generated from a computer output other than word processing, the cost of building and maintaining that information system may be offset by charging a reasonable allocation to the person requesting the record. *§24-72-205(4), C.R.S.* A reasonable research and retrieval fee may be charged. *Black v. Southwestern Water Conservation District, 74 P.3d 462 (Colo. App. 2003).* A charge of \$20/hour has been found to be acceptable, but higher charges may be reasonable.

Upon request, the custodian shall transmit a copy of the requested public record by U.S. mail, other delivery service, facsimile, or electronic mail. The District cannot charge a transmission fee for transmitting public records via electronic mail. Within the time period specified in *§24-72-203(3)(a), C.R.S.*, the custodian shall notify the record requester that a copy of the record is available but will only be sent once the custodian either receives payment or makes arrangements for receiving payment for all costs and fees associated with the request for and transmission of the public record. *§24-72-205(1)(b), C.R.S. (H.B. 13-1041).*

### B. Denial of Access:

Statute permits the District official custodian to deny public access and disallow inspection of the following documents or under the following circumstances:

1. If inspection would be contrary to any State statute;
2. If inspection would be contrary to any Federal statute or regulation;
3. If inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court;
4. Examinations for employment (except as made available for inspection by the party in interest);
5. Records submitted for applicants or candidates for employment, other than those submitted by applicants or candidates who are finalists for chief executive officer positions (if there are three or fewer applicants or candidates for a chief executive officer position who possess the minimum qualifications, they are all finalists and access to their submitted records may not be denied);
6. Real estate appraisals, until the subject property has been transferred;
7. Electronic mail addresses provided by a person to the District;
8. Specialized details of security arrangements or investigations and records of expenditures on security arrangements;
9. Medical, mental health, sociological, and scholastic achievement data (except as made available for inspection by the party in interest);
10. Personnel files (except as made available for inspection by the party in interest and the District official or employee who has direct supervisory capacity);

11. Trade secrets, privileged information, and confidential information or data;
12. Library records disclosing the identity of a user;
13. Names, addresses, telephone numbers and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services;
14. Election records of any person; or
15. Where disclosure or public access would do substantial injury to public interest.  
*§24-72-204(6)(a), C.R.S.*

The determination of whether a document falls within an enumerated exception can be a difficult task. If denial of access is based upon injury to the public interest, the District may apply to the court for an order permitting the District to restrict disclosure. *§24-72-204(6)(a), C.R.S.*

Any person denied access may request a written statement of the grounds for denial, *§24-72-204(4), C.R.S.*, which statement shall be furnished forthwith and cite the law or regulation under which access is denied. Such person may also apply to the court for an order compelling inspection. *§24-72-204(5), C.R.S.*

### **C. Violations:**

Willful or knowing violation of the public right of access is a criminal misdemeanor, punishable by a maximum \$100 fine and ninety (90) days imprisonment in the county jail. *§24-72-206, C.R.S.*

If a person denied access successfully obtains a court order compelling inspection, the District shall be ordered to pay court costs and reasonable attorney fees in an amount determined by the court. *§24-72-204(5), C.R.S.*

## Chapter XII Contracting

### A. Construction Contracts:

#### 1. Conventional Bidding Process - Lowest Responsive, Responsible Bidder:

An Invitation to Bid must be published one time in a newspaper of general circulation within the District's boundaries for all construction contracts for work or materials or both of at least \$60,000. The District may reject any and all bids, and if it appears that the District can perform the work or secure materials for less than the lowest bid, it may do so. *§32-1-1001(1)(d)(I), C.R.S.*

The contract is generally awarded to the lowest responsive, responsible bidder.

It is recommended that a bidding package be issued to respondents to the Invitation to Bid, which includes a project description, all contractual terms and conditions, specifications, forms of bonds to be supplied, and other project documents.

#### 2. Integrated Project Delivery ("IPD") - Best Value:

As an alternative to the conventional bidding process, the District may award an IPD Contract to 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 upon a determination by the Board that IPD represents a timely or cost effective alternative for the public project. *§32-1-1804, C.R.S.*

The District has the option of prequalifying interested entities for an IPD contract by publishing notice of its Request for Qualifications ("RFQ"). *§32-1-1805(1), C.R.S.* Upon reviewing the responses to the RFQ, the District prepares a short list of the most qualified entities to bid on the project, and the District solicits proposals from such entities through a Request for Proposals. *§32-1-1805(2), C.R.S.* Alternatively, the District can skip the RFQ process and solicit proposals solely by publishing notice of a RFP. *§32-1-1806(1), C.R.S.*

The District may accept the proposal that represents the best value to the District. "Best value" does not necessarily mean the low bid. Performance of an IPD Contract by the participating entity shall be in compliance with all laws applicable to public projects.

#### 3. Bonds and Retainage:

It is recommended that the District require a Bid Bond (usually in the amount of 5% of the bid amount) to avoid withdrawal of low bids. Bid Bonds are not, however, required by law.

The law does require every contractor awarded a contract for more than \$50,000 to execute a Penal (Payment) Bond, as well as a Performance Bond in the amount of at least one-half of the contract amount. *§§38-26-105 and 106, C.R.S.* Although not required by statute, a Warranty Bond guaranteeing the warranty provision of the contract (usually one or two years) is also recommended and is usually able to be included into a single Performance, Payment and Warranty Bond.

If a construction contract exceeding \$150,000 is awarded, the District may withhold payment for up to 5% of the value of the entire project. The retainage may be held until the contract is completed satisfactorily and final payment procedures are followed. *§24-91-103(1)(a), C.R.S.*

#### 4. Appropriations Clause:

The District may not contract for a public works project in an amount in excess of the amount appropriated by the District for the project. All construction contracts must contain clauses stating that the amount of money appropriated is equal to or in excess of the contract amount and, prior to issuing a change order, the District must appropriate funds to cover the costs of the additional work and such funds must be available for expenditure. *§24-91-103.6, C.R.S.*

#### 5. Final Payment and Claims:

If the amount of the contract awarded exceeds \$50,000, the District shall, not later than ten days before the final settlement is made, publish a notice thereof at least twice in a newspaper of general circulation in any county where the work was contracted for or performed. The date of final settlement should be more than ten days after the second publication. Thereafter, if no claims are made, payment in full to the contractor may be made on the settlement date.

At any time up to and including the time of final settlement for the work contracted to be done, any person that has furnished labor, materials, sustenance or supplies used or consumed by a contractor or subcontractor, whose claim has not been paid, may file with the District a verified statement of the amount due on account of the claim. Upon the filing of any such claim, the District shall withhold from all payments to said contractor sufficient funds to insure payment of said claim until the claim is withdrawn, paid, or ninety (90) days have passed. *§38-26-107(2), C.R.S.*

If, within ninety (90) days from the date of settlement, the claimant has not filed a lawsuit to enforce such claim, the funds withheld which are not the subject of suit shall be paid over to the contractor. *§38-26-107(3), C.R.S.* If a lawsuit is commenced, the District may be able to interplead the claims (deposit the money with the court) to avoid becoming embroiled in litigation.

The District must make the final payment in accordance with the above procedures within sixty (60) days after the contract is completed satisfactorily and finally accepted by the District. *§24-91-103(1)(b), C.R.S.*

## **B. Other Contracts:**

### **1. Publication/Bid Process:**

No contract for work or material including a contract for services, regardless of the amount, shall be entered into between the District and a Board member or between the District and the owner of 25% or more of the territory within the District unless an invitation to bid is published and such Board member or owner submits the lowest responsible and responsive bid. *§32-1-1001(1)(d)(II), C.R.S.*

Other contracts for the purchase of vehicles, equipment, non-construction materials, real and other personal property, leases, advisory and professional services are not subject to statutory publication or bidding requirements, although some comparative review is advisable.

### **2. Service Contracts/Illegal Aliens:**

All contracts and contract renewals for the procurement of services must include certain certifications from the contractor set forth at *§8-17.5-102, C.R.S.*, regarding illegal aliens.

## **3. Contract Drafting or Review:**

Someone in the District (not necessarily always your attorney) should review each contract and should usually have suggested changes, since contracts are normally tendered by the vendor and therefore slanted to their favor unless changes are requested. Assigning an experienced, capable person to review each contract will pay off over time.

## **C. Intergovernmental Agreements:**

Districts may enter into agreements with other special Districts or other governmental entities for almost any lawful purpose. Such arrangements are becoming much more prevalent as the benefits and economies of scale have fostered a new era of intergovernmental cooperation.

### **1. General Intergovernmental Cooperation:**

Colorado local governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the parties. Such contracts must set forth the purposes, powers, rights, obligations, and responsibilities of the contracting parties. *§29-1-203(1)-(2), C.R.S.* Examples are the joint purchase of equipment, construction of jointly owned fire stations, jointly owned water and sewage treatment facilities, the provision of management, bookkeeping, billing and maintenance services, joint training facilities and programs, joint ownership of hazardous materials handling equipment, etc.

Intergovernmental agreements are very common. A list of all intergovernmental agreements that includes the names of the parties, the nature of the contract and the expiration date of the contract must be filed with the Division of Local Government by February 1 of each year. *§29-1-205, C.R.S.*

### **2. Creating a Separate Legal Entity:**

Local governments may establish separate legal entities through an intergovernmental agreement to provide for the joint exercise or operation of a function, service, or facility, as allowed pursuant to various provisions of Title 29, C.R.S. Regional Water Authorities, Recreation Authorities, and Fire Authorities provide services on a regional basis when consolidation of the special Districts is not practically or politically acceptable, or when the service provided is a special regional addition to the underlying services still provided by the contracting entities.

### **3. Mutual Aid Agreements:**

Special provisions apply to a form of intergovernmental agreement most commonly utilized by Districts providing fire protection and ambulance services. Liability associated with such agreements to mutually aid each other is governed by statute and usually attaches to the entity requesting the emergency aid, unless superseded by the agreement.

### **4. IGA Reporting Requirements:**

Within thirty (30) days after receiving a written request from the Division of Local Government (DLG), the District must provide the DLG with a current list of all contracts in effect with other political subdivisions containing the name of the contracting entities, the nature of the contract, and the expiration date. *§29-1-205(1), C.R.S. (H.B. 13-1203).*

Within ten (10) days after the execution of a contract establishing a separate governmental entity pursuant to *§29-1-204, C.R.S.*, or an amendment or modification thereof, the District must file a copy with the DLG. *§29-1-205(2), C.R.S. (H.B. 13-1203).*



## Chapter XIII Personnel Matters

### A. Legislation:

The areas of labor, employment and personnel issues are heavily regulated by the State and Federal governments. The Acts of which a District should be aware include, but are not limited to:

1. The Federal Fair Labor Standards Act (“FLSA”) regulating minimum wage, overtime pay, equal pay, record keeping and child labor standards.
2. The Federal Occupational Safety and Health Act (“OSHA”) which regulates dangerous conditions in the workplace.
3. The Federal Americans with Disabilities Act (“ADA”) which prohibits discrimination in employment and in the provision of public services and accommodations based on a person’s disability.
4. The Federal Age Discrimination in Employment Act (“ADEA”) which prohibits discrimination based on age in employment practices against persons over age forty (40).
5. Title VII of the Federal Civil Rights Act, which prohibits discrimination in employment, based on race or color, religion, sex, pregnancy, national origin, or opposition to discriminatory practices.
6. Section 1981 of the Federal Civil Rights Act which prohibits discrimination based on race or lineage.
7. Section 1983 of the Federal Civil Rights Act which prohibits any person, under the color of statute, ordinance or regulation from depriving another person of the privileges and immunities of the United States Constitution and laws.
8. The Federal Equal Pay Act which prohibits wage discrimination on the basis of sex for jobs performed under similar working conditions.
9. The Consolidated Omnibus Budget Reconciliation Act (“COBRA”) which generally requires employers to give departing employees the opportunity to continue their health insurance coverage for eighteen (18) months at the employee’s cost.
10. The Federal Family and Medical Leave Act of 1993 (“FMLA”), which imposes certain affirmative acts regarding employee leave on all employers, including public entities employing 50 or more persons.
11. The Colorado Family and Medical Leave Act adds civil unions and committed relationships to those family relationships that are entitled to family leave under the Colorado Act. (H.B. 13-1222).
12. The Uniformed Services Employment and Reemployment Rights Act (“USERRA”), which provides employees who are called up for, or volunteer for, active military service with special employee benefits.
13. The USA PATRIOT Act of 2001, which removed previous legal barriers to the federal government conducting wiretapping surveillance of telephone lines and accessing stored voice and email messages.
14. The Colorado Health Care Coverage Act (Title 10, Article 16, C.R.S.), which is the State counterpart to COBRA, giving extended health insurance coverage of one hundred and eighty (180) days to terminated employees.
15. The Colorado Civil Rights Act (Title 24, Article 34, Parts 3 through 8, C.R.S.) prohibiting discrimination based on disability, race, creed, color, sex, age, marital status, national origin,

- sexual orientation, or ancestry in employment, housing, public accommodations and advertising.
- 16. The Colorado Youth Employment Opportunity Act of 1971 (Title 8, Article 12, C.R.S.) providing child labor standards.
- 17. Colorado laws regarding wages and hours (Title 8, Articles 4 through 6, and 13, C.R.S.).
- 18. The Workers' Compensation Act of Colorado (Title 8, Articles 40 to 47, C.R.S.) which regulates disability and medical benefits of injured workers.
- 19. The Colorado Employment Security Act (Title 8, Articles 70 to 82, C.R.S.) which provides for unemployment benefits.

**B. Personnel Policy Manuals:**

A personnel policy manual can provide the District with a useful tool in dealing with reoccurring employment issues. Whether a specific policy is appropriate for a given District depends upon the size of the District, the District's existing policies and procedures, and the decisions made by the Board members. In smaller Districts, some subjects addressed in these policies may be dealt with informally or not at all. In larger Districts, the need for uniform treatment of a larger group of, and the dissemination of correct information to, all employees may dictate a more comprehensive selection of policies. Because personnel policy manuals have in some cases been construed by the Courts as constituting part of an employee's employment contract, they must be carefully drafted.

Typical personnel policy manuals include the following subjects:

- 1. Working conditions, including work week and hours, attendance, safety, and work environment.
- 2. Compensation and benefits.
- 3. Leave policies.
- 4. Employment, promotion and evaluation practices.

- 5. Layoffs.
- 6. Rules of conduct.
- 7. Discipline.
- 8. Grievances.
- 9. Employee records.
- 10. Separation from employment.
- 11. Specific policies of concern to the District, including drug testing.

The Special District Association has published a Model Personnel Guidelines which Districts may consult in developing their own personnel policy manuals.

**C. Drug and Alcohol Testing:**

The Federal Highway Administration adopted regulations requiring mandatory drug and alcohol testing for employed drivers with commercial driver's licenses. Drivers of firefighting equipment are exempt. Other organizations employing employees not governed by the FHA requirements may also adopt internal drug and alcohol policies. Qualified legal counsel or consultants should be contacted in formulating such testing policies.

Due to the Colorado Constitutional amendment authorizing the use of medical marijuana with a registry identification card, policies should be carefully drafted with recognition of this as an area of evolving legal consideration.

**D. Federal and State Posting Requirements:**

Both Federal and State law require the posting of certain informational posters at a prominent location in the District's business office. Failure to make the requisite postings could subject the District to significant financial penalties. The following postings must be made:

- 1. Federal Equal Employment Opportunity (EEOC);
- 2. Federal Minimum Wage (Dept. of Labor);
- 3. Family and Medical Leave Act (Dept. of Labor);

4. State Fair Employment (Dept. of Labor);  
and
5. State Minimum Wage (Dept. of Labor).

\* The Federal Occupational Safety and Health Act (OSHA) does not currently apply to local governments, although OSHA standards may constitute reasonable guidelines.

#### **E. Volunteers:**

Volunteers present unique considerations for a District with respect to compensation, insurance, personnel policies, liability, releases and indemnification.

#### **F. TABOR:**

Most employees in Colorado are not employed under contracts. If, however, a contract is entered into with an employee, a multi-year employment contract may constitute a “multiple fiscal year financial obligation” subject to the limitations of TABOR.

#### **G. Use of Credit Report Information and Employee Personal Passwords (S.B. 13-018 & H.B. 13-1046):**

Employers are prohibited from using credit information in employee hiring, evaluation, or discipline, unless the information is related to the person’s present or potential job. Employers may not ask a current or prospective employee to provide access to credit reports or related information unless such information is directly related to the job, or the job is one that involves fiduciary relationships or the handling or accounting of funds.  
*§8-2-126, C.R.S.*

account. This does not prohibit employers from requiring employees to disclose user names, passwords and other means for accessing non-personal accounts or services that provide access to the employer’s internal computer or information systems. *§8-2-127, C.R.S.*

An employer may not suggest, request, or require an employee or applicant to disclose, or cause an employee or applicant to disclose, any user name, password or other means for accessing the employee’s or applicant’s personal account or service through employee or applicant’s personal electronic communication device. Employers may not compel an employee or applicant to add anyone, including the employer or his or her agent, to the employee’s or applicant’s list of contacts associated with a social media account, or require, request, suggest, or cause an employee or applicant to change privacy settings associated with a social networking

## Chapter XIV Property Issues

The range, number and combination of property issues is vast. The following is merely an outline of potential property issues which a District may confront:

### A. Acquisition Issues:

#### 1. Title Insurance and Title Documents:

While not required in all instances, the purchase of adequate title insurance is usually recommended for the District's protection in acquisitions of real property. Further, a complete review of the effect of Title Documents (existing deeds of trust, easements, leases, covenants, restrictions, etc.) must be made.

#### 2. Payoff of Taxes:

As a governmental entity, a District is exempt from paying property taxes. There are a variety of means to effectuate this exemption, including an initial payoff of all outstanding taxes upon acquiring the real property, based on the previous year's rate of levy and the current assessed valuation.

#### 3. Financing:

A District has various means of financing an acquisition of real property which are available to both public and private entities. Lease-purchase agreements and revenue bonds are commonly used for financing.

#### 4. Environmental Audits:

While not required, an environmental audit is strongly recommended before the purchase or sale of any real property. Potential environmental liability can be quite expansive and potentially burdensome. A regulatory compliance oriented review of historical operations on the property is a valuable tool in limiting present and future environmental liability.

### B. Condemnation/Eminent Domain:

The District has the power of eminent domain to utilize if the District is unable to negotiate and effectuate the

purchase of a needed parcel of real property. *Art. II, Sect. 15, Colo. Const.; §§38-1-101, et seq., C.R.S.*

Prior to a District condemning property, it must show that there is public need and necessity for the acquisition of land, and that there has been a failure of good faith negotiations with the landowner. *§38-1-102, C.R.S.*

An appraisal is required at District expense if the property to be condemned has an estimated value of at least \$5,000. *§38-1-121, C.R.S.*

Park and recreation Districts are restricted in condemnation powers to the taking of property for purposes of television relay and translator facilities, easements and rights-of-way for access to park and recreational facilities operated by the park and recreation District and only where no other access to such facilities exists or can be acquired. *§32-1-1005(c), C.R.S.*

Fair compensation, which is neither too little nor too great, must be given for the condemned property. *§§38-1-101 and 38-1-114, C.R.S.*

Water rights are not subject to condemnation by Districts. *§32-1-1006(1)(f), C.R.S.*

### C. Easements, Leases and Other Property Interests:

Easements may be acquired by gift, purchase, condemnation, prescription or acquiescence. In addition to the common rights-of-way and utility easements, various unique forms of easements exist, such as conservation easements wherein property can be preserved in a natural, scenic or open condition. Conservation easements or other use restrictions may be used as a vehicle to preserve the open space or wildlife conditions of property.

A District may enter into leases, but may be limited by annual appropriation restrictions previously discussed.

Life estates are often retained by sellers, allowing the District to obtain full use only upon death of the seller. Licenses are sometimes used, which grant a property right that is severely limited by use or time.

#### **D. Encroachment onto Public Property:**

Prescriptive rights cannot be acquired against a governmental entity. If a landowner encroaches upon District property, no property interest will be acquired which is adverse to the District regardless of the duration of the encroachment.

#### **E. Relationship to County and Municipal Powers:**

The District is subject to the regulatory controls of the county or municipality within which the District lies. The following are the primary areas of county or municipal control:

##### **1. Zoning:**

The District is subject to the applicable zoning plan. However, local governments, including special Districts, have long been authorized to follow a separate procedure known as “location and extent” when seeking county or municipal approval of the District’s construction of a new facility. The review of a location and extent application is limited to approval or disapproval, but disapproval by the county or municipality can be overruled by the District’s Board of Directors. §§ 30-28-110(1) and 31-23-209, C.R.S. A County, at least, may not use its zoning authority to frustrate the efforts of the District to carry out its statutory duties.

The Colorado Supreme Court has affirmed that a District’s override authority applies equally to the Planned Unit Development Act and that the District is not required to seek a modification to the County’s PUD designation prior to applying for location and extent review for the construction of a new fire station. *Board of County Commissioners v. Hygiene Fire Protection District*, 221 P.3d 1063 (Colo. 2009).

##### **2. Subdivisions:**

The District is subject to the applicable subdivision regulations. The District may be exempt from some Subdivision requirements pursuant to §30-28-101(10)(c)(II), C.R.S., allowing local governments to acquire property less than thirty-five (35) acres in size without first subdividing the acquisition if the local government has the power to exercise eminent domain. Some county attorneys believe that

provision requires Districts to begin a condemnation action in order to avail themselves of the exemption; but that is not what the statute says.

##### **3. Building Codes and Permits:**

The District is subject to the requirements imposed by a county or municipality relating to building codes and permits.

## Chapter XV TABOR

question that exempts future revenue from TABOR limitations under the proper circumstances. *City of Aurora v. Acosta*, 892 P.2d 264 (Colo. 1995).

### A. Introduction:

The Taxpayer's Bill Of Rights ("TABOR"), which amended the Colorado Constitution by the addition of Article X, Section 20, has a tremendous impact on all Colorado local governments, including special Districts. The interpretation and application of TABOR remains uncertain in many respects and continues to evolve through legislative and judicial interpretations. The General Assembly has attempted to clarify some of the confusion by adopting several laws interpreting the terms and provisions of TABOR. The Colorado Supreme Court has also attempted to resolve certain issues by delivering an opinion to interrogatories propounded by the General Assembly. The Colorado Court of Appeals and Colorado Supreme Court have determined certain TABOR issues. The validity of the TABOR related legislation, as well as other interpretive issues, will only be conclusively determined by future decisions of the Colorado appellate courts. Neither this Chapter nor any other reference within this Manual is intended to be a comprehensive legal analysis of TABOR. You are strongly encouraged to seek the assistance of qualified counsel regarding legal issues related to TABOR.

### B. Financial Limitations:

#### 1. Mill Levies:

TABOR requires voter approval to:

- a. Increase mill levies above the current mill levy, except in certain instances for debt service on general obligation bonds, pension payments and final court judgments. A Supreme Court decision has held that an election is not required to increase mill levies in order to make payments on outstanding debt that was approved by electors prior to the passage of TABOR.
- b. Increase District tax revenue over revenue collected in the prior year by more than the allowable rate of growth (rate of inflation + annual local growth). The Supreme Court has validated a ballot

#### 2. Spending:

TABOR prohibits the District from increasing its spending from the prior year by more than inflation plus local growth, unless exempted by the voter approval of a proper ballot question. This fiscal year spending limitation is indirectly a revenue limitation because of refund requirements. Fiscal year spending does not include refunds in the current or next fiscal year, gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards and property sales.

Unless waived by voter approval, the statutory limitation imposed by §29-1-301, C.R.S. providing that operational mill levy revenue may not be increased more than 5½% annually (with certain adjustments) will still apply (i.e. in instances when inflation is greater than 5½%, property tax revenues for operations may still only be increased by 5½%).

#### 3. Debt:

TABOR requires advance voter approval to create new District debt or financial obligations that extend beyond the current fiscal year, including general obligation and revenue bonds.

Voter approval is not required for refinancing debt at a lower interest rate, obligations with adequate present cash reserves pledged irrevocably and held for payments in future fiscal years, and qualifying lease-purchase agreements.

### C. Election Requirements:

The dates on which ballot issue elections may be held are limited by TABOR to the state general election, biennial regular District election, or on the first Tuesday in November of odd-numbered years.

The Court of Appeals has held that TABOR's election provisions apply only to fiscal matters of tax, spending or revenue. Non-fiscal ballot questions are not subject to the date or notice provisions of TABOR.



All comments for and against a TABOR ballot issue shall be received by the Designated Election Official on or before the Friday before the 45<sup>th</sup> day prior to the election. The Designated Election Official shall compile a summary of all comments received and, for regular biennial District elections, ensure mailing of the summary and other required information (TABOR Notice) to all active registered voters at least thirty (30) days before the election. For November (coordinated) elections, the TABOR Notice shall be delivered to the County Clerk and Recorder forty-two (42) days prior to the election, and the County Clerk and Recorder shall mail the TABOR Notice. Only comments addressing a specific ballot issue received from eligible electors may be summarized.

#### **D. Multiple Fiscal Year Financial Obligations:**

TABOR prohibits incurring multiple fiscal year financial obligations without voter approval, which greatly impacts the existing and future contractual relationships of the District. Interpreted conservatively, all multi-year contracts (including employment contracts) requiring the expenditure of District funds would require voter approval unless adequate cash reserves have been pledged and held to pay the obligation.

The Court of Appeals has determined that entering into a properly structured lease/purchase agreement without voter approval or adequate cash reserves does not violate TABOR. *Board of County Commissioners of Boulder County v. Dougherty, Dawkins, Strand & Bigelow, 890 P.2d 199 (Colo. App. 1994)*. A clause making the lease/purchase obligation dependent on annual appropriations will, in many cases, prevent a TABOR violation.

#### **E. Enterprise Exemption:**

An “Enterprise” is expressly excluded from TABOR requirements.

An “Enterprise” is defined as:

1. A government-owned business;
2. Authorized to issue its own revenue bonds; and
3. Receiving less than 10% of annual revenue in grants from all Colorado state and local governments combined.

Water service activities, including the water and/or wastewater service of a special District, are considered “Water Activity Enterprises” under *§37-45.1-102(4), C.R.S.*

There are Colorado appellate court case law decisions on the subject of Enterprises. The Courts applied the three-part test set forth above. The Colorado Supreme Court found that the E-470 Highway Authority was not an Enterprise because it had the power to tax (although the power was not being exercised) and, therefore, was not exempt from the TABOR limitations. *Nicholl v. E-470 Public Highway Authority, 896 P.2d 859 (Colo. 1995)*.

In ruling upon interrogatories promulgated by the State, the Supreme Court found that the Great Outdoors Colorado Trust Fund Board was not an Enterprise, because it did not have the authority to issue its own revenue bonds. *Submission of Interrogatories on Senate Bill 93-74, 852 P.2d 1 (Colo. 1993)*.



## NOTES

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**The SDA Board Member Manual is published by the Special District Association of Colorado  
in cooperation with the law firm of  
Collins Cockrel & Cole, P.C.**

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