
FORMATION AND STATUTORY RESPONSIBILITIES



SPECIAL DISTRICT ASSISTANCE

Department of Local Affairs
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INTRODUCTION

The following information is intended as general guidance on formation and subsequent reporting requirements of special districts organized pursuant to Title 32 of the Colorado Revised Statutes. This is not a complete review of the Special District Act, and is not to be construed as legal advice. Any person considering the organization and ongoing responsibilities of a special district should obtain competent legal counsel. All statutory citations refer to the Colorado Revised Statutes as amended in 1998.

For more information or for more DOLA technical assistance publications, see the department's web site at www.dola.colorado.gov and click on Data, Information and Publications.

FORMATION

COUNTY APPROVAL

1. The organizers of a special district (petitioners), must file a Service Plan with the county commissioners and the county clerk and recorder of each county in which the proposed district is located at least ten days prior to a regular meeting of the board of commissioners, as well as with the Division of Local Government and state auditor. A processing fee of no more than \$500.00 may be required to accompany the filing of the service plan to cover county costs. If the board of county commissioners determines that special review of the service plan is required, the board may impose an additional fee.

C.R.S. § 32-1-202(1) and (3)

If the proposed district is contained entirely within the boundaries of a municipality or municipalities, then a resolution of approval by the governing body of each municipality is required. All approval authority for the organization of such a district rests with the governing bodies of the municipalities in which the district is located rather than with the board of county commissioners.

C.R.S. § 32-1-203, 204.5; 205; 207 and 208

2. The clerk and recorder must notify the Division of Local Government of the name and type of special district for which the plan has been received using the "Notice of Filing a Service Plan" (Form DLG 60) within five days after the filing of the plan.

C.R.S. § 32-1-202(1)

3. The board of county commissioners, at the next regular meeting, must set a date, within thirty days from that meeting date, for a public hearing on the plan. The board also must notify in writing the Division of Local Government, and each municipality and special district which has levied an ad valorem tax within the next preceding year and is within a radius of three miles of the proposed district ("interested parties"), of the date, time and place of the hearing.

C.R.S. § 32-1-202(1) and 204(1)

4. The Service Plan must include:

- A description of the proposed services;
- A financial plan showing how the proposed services are to be financed, including the proposed operating revenue from property taxes for the first budget year;
- All proposed indebtedness for the district shall be displayed in a schedule showing the years in which the debt will be issued;
- Preliminary engineering or architectural survey (if applicable);
- A map of the district's boundaries;
- An estimate of population and valuation for assessment;
- Description of facilities to be constructed;
- The standards of construction and service and their compatibility with such standards of nearby local governments;
- An estimate of costs (land acquisition, engineering and legal services, administrative services, proposed debt and interest rates, and other organizational and operational expenses);
- Any proposed intergovernmental agreements for services; and
- Information showing that the criteria set out in C.R.S. § 32-1-203, are met, or such additional information as the Board of County Commissioners may require so as to meet those criteria.

C.R.S. § 32-1-202(2)

5. If there is a county or regional planning commission, review and comment is necessary before the board of county commissioners holds the public hearing. The county must publish notice of its hearing in a newspaper having general circulation within the proposed district, at least twenty days before the hearing, including a general description of the proposed district and an outline of the methods and procedures by which a property owner may petition for exclusion from the district.

C.R.S. § 32-1-204(1)

6. The petitioners must send a letter notification of the hearing to all property owners in the proposed district not more than 30 days prior but not less than 20 days prior to the hearing. The notification must indicate date, time, location, type of district and purpose of the hearing. The maximum mill levy, if any, which may be imposed by the proposed district, and procedures for the filing of a petition for exclusion. Exception to this mailing requirement may be made when the petitioners represent one hundred percent of the property owners.

C.R.S. § 32-1-204(1.5)

7. The board of county commissioners may exclude territory from a proposed district prior to approval of the service plan. The petitioners shall have the burden of proving that such exclusion is not in the best interest of the proposed district. Any person desiring exclusion of property shall submit a request to the board of county commissioners no later than 10 days prior to the hearing on the service plan. The board of commissioners shall not be limited in its action with respect to exclusion of territory based upon such requests.

C.R.S. § 32-1-203(3.5)

8. Within 20 days after completion of the hearing, the board of county commissioners must notify the petitioners in writing of its action, which may include:
- Full approval of the service plan;
 - Disapproval with specific, detailed reasons for the disapproval; and
 - Conditional approval, subject to the submission of changes, modifications or additional information, including the reasons for the conditions.

C.R.S. § 32-1-203(1); 204(4)

9. The board of county commissioners shall disapprove the service plan unless evidence satisfactory to the board of each of the following is presented:
- There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district;
 - The existing service in the area to be served by the proposed district is inadequate for the present and projected needs;
 - The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries; and
 - The area to be included in the proposed district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

C.R.S. § (32-1-203(2)

10. In addition, the board of county commissioners may disapprove a service plan if evidence satisfactory to the board is not presented for any of the following:
- Adequate comparable service is not, or will not be, available to the area through other existing local governments within a reasonable time;
 - The facilities and service standards of the proposed district are compatible with those of the county where the district is located and with those of each municipality identified as an "interested party";
 - The proposal is in substantial compliance with a county master plan;
 - The proposal is in compliance with any water quality management plan for the area; or
 - The creation of the district will be in the best interest of the area to be served.

C.R.S. § 32-1-203(2.5)

11. If the service plan is approved, the board of commissioners shall issue a resolution of approval. A resolution of approval of the service plan is required from each county in which the proposed district is located, or each municipality in which the district is wholly contained.

C.R.S. § 32-1-205

12. If the board of county commissioners fails to approve the service plan, the petitioners may request judicial review. If the court determines that the county action was arbitrary, capricious or unreasonable, the court shall remand the matter back to the board of county commissioners or the governing body of the municipality for further action with specific direction. Interested parties can also request such review if the county does approve the service plan.

C.R.S. § 32-1-206

13. After approval of a district's service plan, any material modifications to that plan must be approved by the board of county commissioners before such modifications can be effected.

C.R.S. § 32-1-207(2)

14. No legal action may be brought to prohibit any activity as a material departure from the service plan of the district unless such action is brought within 45 days of the district's publication of notice of intent to undertake such activity.

C.R.S. § 32-1-207(3)(b)

DISTRICT COURT

1. After approval of the service plan, the petitioners file a petition for organization signed by not less than thirty percent or two hundred (whichever is less) of the taxpaying electors of the proposed district in district court. The petition must include:

- The type(s) of service(s) to be provided by the proposed special district;
- The name of the district.
- A description of the facilities and improvements to be constructed, installed or purchased for the district;
- A statement as to whether or not the proposed district lies wholly or partly within another district or municipality;
- The estimated cost of the proposed facilities and improvements;
- The estimated property tax revenues for the district's first budget year;
- A general description of the boundaries with such certainty as to enable a property owner to determine whether or not his property is within the district;
- If selected by the petitioners, a general description of the boundaries of director districts;
- The petition must be accompanied by a resolution approving the service plan (see above # 11), unless the service plan has been approved by the court;
- A request for the organization of the district; and

- Any proposition to issue general obligation bonded indebtedness or questions to implement section 20 of Article X of the Colorado Constitution. The petition must be accompanied by the resolution approving the service plan, see #1 and #10 under "county approval."

C.R.S. § 32-1-301

2. The petitioners must file a bond or cash deposit with the court sufficient to pay all expenses of the proceedings if the district is not successfully organized. During the proceedings, the court may determine that additional bond/cash deposit amounts will be required.

C.R.S. § 32-1-302

3. Upon receipt of a petition for organization, the court must set a date and place (between twenty and forty days after the filing) for a hearing thereon. The clerk of the court must publish notice of the hearing in a newspaper having general circulation within the proposed district; the notice must indicate the boundaries and purposes of the district and the time and place of the hearings of the petition. A copy of that notice must be mailed to the board of county commissioners in each county in which the proposed district is located and to the "interested parties" who were eligible for notice of judicial review provision (see #11 under county approval).

C.R.S. § 32-1-304

4. No later than ten days before the hearing day any owner of real property may file a petition with the court to have his/her property excluded from the district. Upon hearing the petition for organization, the court shall consider all petitions for exclusion and objections thereto and may then order the exclusion of petitioned property.

C.R.S. § 32-1-305(3)

5. If the petition for organization is found to have conformed to all legal requirements, then the court shall order an election held on the question of organization of the proposed district, in accordance with the Uniform Election Code.

C.R.S. § 32-1-305(4)

6. At such election each voter shall vote on the question of organization and for five, or seven, electors of the district who will constitute the board of the district, if organized. **If the organizational election includes ballot issues concerning the creation of any debt or other financial obligation, C.R.S § 1-7-908 details mandatory notice requirements. In addition, C.R.S. § 1-11-201 provides for the contesting of such elections where the notice is not properly given or if it contains any material misstatement of the information statutorily required.**

C.R.S. § 32-1-305(5)

7. If the voters approve the organization of the district, the court shall declare the district organized (C.R.S. § 32-1-305(6)). The declaration of organization of a special district is final and not subject to appeal, except by the State of Colorado.

The attorney general may, within thirty days, file a "quo warranto" action to appeal the organization of such a district (C.R.S. § 32-1-305(7)).

8. Within thirty (30) days of organization, the district must file certified copies of the court order organizing the district and a copy of the approved service plan with the county clerk and recorder of each county in which the district is located. The court order, approved service plan and a map of the special district must be filed with the Division of Local Government. A map of the special district must be filed with the county assessor of each county in which the district extends. Thereafter, a current, accurate map must be on file with the division and county assessor(s) on or before January 1, of each year.

C.R.S. § 32-1-306

9. No organization is effective until the order is recorded by the county clerk and recorder(s). A certified copy of notice of such action to the assessor must be filed with the Division of Local Government.

C.R.S. § 32-1-105

PROPERTY TAXATION REQUIREMENTS

1. If the district intends to levy a tax for the calendar year in which it is organized, evidenced by court order creating the district, then the district must provide by July 1 the following to the assessor and Board of County Commissioners in each county in which the district is located:
 - A notice of organization;
 - An official notice that a tax will be levied that year;
 - A copy of the legal description of the district; and
 - A map of the district.

C.R.S. § 39-1-110

REPORTING AND COMPLIANCE

BUSINESS ADDRESS

1. By January 15 of each year the district must report to the board of county commissioners, county assessor, county treasurer, and county clerk of each county in which the district is located, the governing body of any municipality in which the district is located, and the Division of Local Government, the following information:
 - The name of the chair of the board;
 - The contact person;
 - The business address; and
 - The telephone number;

If these are not located within the district, then the district must notify each such county clerk and recorder and municipality's governing body of the name, address and telephone number of a contact person located within the District, if such person is available.

2. If the district fails to provide this information, the board of county commissioners or the governing body of the municipality may notify any county treasurer to withhold moneys of the special district.

C.R.S. § 32-1-209

BUDGET

1. Each district must adopt a budget subsequent to public notice of, and public hearing on, such budget by December 31st of each year. If levying a tax, the board of directors must adopt a budget before certification of the mill levy (December 15). Failure to observe the deadline results in a reduction in appropriation. Failure to file a certified copy of the adopted budget may result in the division authorizing the county treasurer to withhold tax revenue.

C.R.S. § 29-1-108(2) and 29-1-108(3)

2. A certified copy of such adopted budget must be submitted to the Division of Local Government by January 30th of the budget year.

C.R.S. § 29-1-113

3. The budget must conform to a number of statutory requirements including setting forth the following information:

- All proposed expenditures for administration, operations, maintenance, debt service and capital projects to be undertaken or executed by any spending agency during the budget year;
- Explanatory schedules or statements classifying the expenditures by object and source;
- Anticipated revenues for the budget year;
- Corresponding actual figures for the prior fiscal year and actual, estimated and proposed figures projected through the end of the current fiscal year;
- All beginning and ending fund balances;
- A written budget message describing the important features of the budget, a statement of the budgetary basis of accounting used, and a description of the services to be delivered during the budget year;
- Disclosure, in a separate schedule, of total amounts to be expended for payment obligation under all lease-purchase agreements (C.R.S. § 29-1-103(3)(d)); and
- Evidence that expenditures do not exceed available revenue sources (C.R.S. § 29-1-103).

4. After adoption, the budget must be used in conjunction with regular financial reports for comparison to actual revenues and expenditures. The budget officer or staff must keep records of all expenditures and report only changes that affect appropriations.

C.R.S. § 29-1-114

5. The State of Colorado's Constitution was amended November 4, 1992 to incorporate the Taxpayer's Bill of Rights, which causes local governments to be limited in spending and revenue activities. It is prudent that local governments do long range planning concerning budgeting and finance with regards to the requirements specified in TABOR, Art. X Sec. 20 of the State Constitution.

AUDITS

1. An annual audit of the financial affairs of the district must be completed by every District by June 30 and filed with the Office of the State Auditor by July 31.
C.R.S. § 29-1-603
2. A district that has an annual budget of less than \$125,000 may apply to the Office of the State Auditor for an exemption from audit. Such request for exemption must be filed by March 31. Such application is in the form of a financial report, and failure to file this report causes the district to lose its exemption for that year and the following year.
C.R.S. § 29-1-604
3. An audit exemption may be granted for two consecutive years if the district's budget is between \$50,000 and \$125,000. The third year in which the budget exceeds \$50,000 must result in an audit. Districts that have budgets under \$50,000 may apply for audit exemptions every year.
C.R.S. § 29-1-604
4. Failure to file a certified copy of the audit can result in the state auditor authorizing the county treasurer to withhold tax revenues or an audit to be made at the expense of the local government.
C.R.S. § 29-1-606(5)

ELECTIONS

1. Special districts must hold regular elections on the first Tuesday succeeding the first Monday of May in every even-numbered year.
C.R.S. § 32-1-103(17)
2. Regular elections are for the purpose of electing directors to the board and for the submission of other public questions, if any. Two or three directors have their terms of office expire every two years, and those offices are filled by regular election. Terms are for four years.
C.R.S. § 32-1-103(17) and 32-1-305.5(2)&(3)
3. Vacancies on the board that have been filled by appointment are also subject to election. An appointment is made only until the next regular election, at which time the remaining un-expired portion of the term must be filled by election. This would result in a two-year term.
C.R.S. § 32-1-905(2)(a)
4. Special elections can be held only on the first Tuesday after the first Monday in February, May, October, December, November of even numbered years and the first Tuesday in November of odd numbered years.
C.R.S. § 32-1-103(21)
5. Organizational elections for districts are ordered by the court. The first board of directors is elected if the question for the organization is approved.
C.R.S. § (32-1-803.5

6. Regular elections must be publicized by:
- A notice of election must be published at least 10 days before the election. (This is a mandatory notice.)

C.R.S § 1-5-205(1) and 1-5-206(2)(6)

- Post card notice or voter information letter is to be sent not less than 15 days before the election. (This is an optional notice.)

C.R.S. § 1-5-206(2)(a)

7. Absentee voting must be provided for.

C.R.S. § 1-8-101

8. Elections, other than recall elections, may be conducted by mail ballot.

C.R.S. § 1-7.5-104

9. If, by close of business on the 63rd day before the regular election day, there are not more candidates than offices to be voted upon, the designated election official, if instructed by resolution of the governing body, shall cancel the election and declare the candidates elected.

C.R.S. § 1-5-208

Notice of such cancellation must be:

- Posted at each polling place;
- Posted in the office of the designated election official;
- Published to inform the electors of the cancellation;
- Posted in the office of the clerk & recorder; and
- A copy of the notice must be sent to the division within 45 days after the originally scheduled election day.

C.R.S. § 1-11-103

10. A certificate of election results must be made and a copy sent to the Division of Local Government and the county clerk, and delivered to the candidates who received the highest number of votes. No later than seven days after the election the canvassers shall issue a certified statement of results and make out an abstract vote for each office.

C.R.S. § 1-11-103

11. An election manual for special district is published biennially by the Division of Local Government and mailed to each special district no later than January 15th in even numbered years.

C.R.S. § 1-1-108

MAPS

1. Each special district must maintain a current, accurate map of the boundaries of the district, and shall provide for such map to be on file with the county assessor in each county in which the special district extends, and with the Division of Local Government on or before January 1 of each year.

C.R.S. § 32-1-306

ANNUAL REPORT

1. The board of county commissioners, or governing body of a municipality within whose boundaries a district is located, may request a district to file a special district annual report not more than once a year. The report shall be filed with the board of commissioners, any municipality in which the special district is wholly or partially located, the Division of Local Government, the state auditor. Such report shall be deposited with the county clerk and recorder for public inspection. The report shall be made available by the special district to any interested party. The report shall include, but not be limited to, information on the progress of the special district in the implementation of the service plan.

C.R.S. § 32-1-207(3)(c)

2. If the district fails to submit the requested annual report within nine months of the date of the request, the board of county commissioners of the governing body of any municipality in which the district is located may notify any county treasurer holding moneys of the district to prohibit release of such moneys until the report is submitted.

C.R.S. § 32-1-209

NON-RATED SECURITIES REPORTING REQUIREMENTS

If a special district has securities outstanding which are non-rated and which were issued to the public, for an amount of not less than \$1 million, and for a term of more than one year payable beyond the next year, then that district must file an annual report on form DLG 30 with the Division of Local Government. This report must be filed within sixty days following the end of the fiscal year.

C.R.S. § 11-58-105

DEBT

QUINQUENNIAL FINDING OF REASONABLE DILIGENCE

Each special district with authorized and unissued general obligation debt shall certify by the district by certified mail to the board of county commissioners of each county in which the special district is located or to the governing body of the municipality which adopted a resolution of approval of the special district within forty-five days. If for any reason the certification was not made in the time frame required the district shall certify such election results by certified mail no later than thirty days before issuing any general obligation debt to the board of county commissioners or the governing body of such municipality. The district shall file a copy of any certification with the division of securities within the applicable time period.

C.R.S. § 32-1-1101.5(1)

CHANGE OF DEBT ISSUANCE SCHEDULE

The board of directors of a district shall notify the board of county commissioners or the governing body of the municipality of any alteration or revision of the proposed scheduled debt issuance set forth in the financial plan.

C.R.S. § 32-1-202(2)(b)

DISSOLUTION BY ADMINISTRATIVE ACTION

The Division of Local Government may initiate a dissolution action if:

- The district has failed to hold or properly cancel a regular board of directors election;
- Failed to adopt a budget for two consecutive years;
- Failed to comply with the Local Government Audit Law for two consecutive years;
- or
- Failed to provide, or attempt to provide, any of the services for which the District was organized for two consecutive years; and
- There is no outstanding financial obligation.

C.R.S. § 32-1-710(1)(a)(I); (II); (III); (IV)(b)

If the district, after proper notification by the division, fails to respond to the notice, the division will proceed to submit a declaration of dissolution to the district court that shall make a determination to certify the district dissolved.

C.R.S. § 32-1-710(3)