

Overview, Powers and Governance of Special Districts and Urban Renewal Authorities

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HISTORY AND OVERVIEW OF SPECIAL DISTRICTS

A. Purpose and Formation of Title 32 Special Districts

1. Introduction. As approving jurisdictions and land developers generate plans for new development and redevelopment, they are challenged to create new communities that address concerns associated with “urban sprawl” while avoiding an environment that is a sterile sea of uniformity. These challenges are compounded with the more practical issues in accomplishing a land use plan such as accessing water and sewer lines and facilities, addressing traffic problems, providing community park and recreation improvements, and addressing regional storm drainage issues – all while facing budget shortfalls and legal and political limitations on authority to raise revenues.

In order to adequately address these issues and to make projects financially feasible, it is necessary for land developers to obtain project funding at an economical price. The utilization of Title 32 metropolitan districts (“Special Districts”) allows the governing jurisdiction and the land developer to determine a plan for financing public improvements which acknowledges that development should pay its own way and public improvements should be financed utilizing tax-exempt municipal financing whenever possible. Because the ultimate property owners (whether commercial or residential), always ultimately pay the costs of public improvements, they, too, benefit from the most economical financing available.

As a development is being evaluated, it is important that alternative methods of financing be considered, especially the potential for utilizing Special Districts either alone or in conjunction with other public finance vehicles. In general, the utilization of a Special District mechanism allows for the organization of a governmental entity with the capacity to impose taxes and fees and to issue tax-exempt municipal bonds to construct the necessary public

improvements for the project. It allows for an overlay taxing entity to be put in place on only those properties benefiting from the project-specific improvements.

2. What is a Special District?

(a) A quasi-municipal corporation and political subdivision of the State of Colorado formed pursuant to the Special District Act, Article 1, Title 32, of the Colorado Revised Statutes.

(b) Subject to most state statutes that apply to other governmental entities, such as open meetings and public records laws.

3. Powers of Special Districts. Statutory powers of Special District include, but are not limited to the following.

(a) Finance, construct, operate and maintain the following categories of public improvements:

(i) Street: Includes curbs, gutters, culvert and other drainage facilities, underground conduits, sidewalks, trails, public parking lots, structures and facilities, paving, lighting, grading, landscaping, bike paths and pedestrian ways, pedestrian overpasses, retaining walls, fencing, entry monumentation, streetscaping, bridges, overpasses, underpasses, interchanges, median islands, irrigation, traffic and safety controls and devices on streets and highways and at railroad crossings, signalization, signing and striping, area identification, driver information and directional assistance signs.

(ii) Safety Protection: Includes traffic and safety controls and devices on streets and highways and at railroad crossings, traffic signals and signage, and underpasses or overpasses at railroad crossings.

(iii) Water: Includes a potable and non-potable water supply, storage, transmission and redistribution system for domestic and other public and private purposes.

(iv) Sanitary Sewer: Includes storm or sanitary sewers, or both, flood and surface drainage, treatment and disposal works and facilities, or solid waste disposal facilities or waste services.

(v) Park and Recreation: Includes community parks, bike paths and pedestrian ways, fencing, trails, regional trails, fields, tot lots, open space, cultural activities, common areas, community recreation centers, tennis courts, outdoor lighting, event facilities, irrigation facilities, lakes, water bodies, swimming pools, public fountains and sculptures, art, gardens, landscaping, weed control, and other active and passive recreational facilities, improvements and programs.

(vi) Transportation: Includes a system to transport the public by bus, rail or any other means of conveyance or any combination thereof, public transportation system improvements, transportation equipment, park and ride facilities, public parking lots, structures, roofs, covers and facilities.

(vii) Mosquito Control: Includes mosquito control and eradication facilities, improvements, programs, equipment and supplies, elimination or treatment of breeding grounds and purchase, lease, contracting or other use of equipment or supplies for mosquito control.

(viii) Television Relay and Translation: Includes equipment, facilities and structures, and equipment, land, easements and extensions of and improvements to such facilities.

(ix) Fire Protection: Includes fire stations, ambulance and emergency medical response and rescue services, and related equipment and facilities.

(b) Levy and collect ad valorem (property) taxes.

(c) Issue debt – bonds, notes, loan agreements, certificates of indebtedness or other obligations, both tax-exempt and taxable.

(d) Acquire, dispose of and encumber real and personal property necessary to the functions and operation of the Special District.

(e) Impose fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the Special District.

(f) Create enterprises pursuant to Section 20, Article X of the Colorado Constitution.

(g) Furnish covenant enforcement and design review services in certain circumstances.

4. Why use Special Districts? A Special District generates an independent source of revenue to finance the costs of constructing, operating and maintaining public improvements within a subarea of a city or county and, in this regard, requires that growth pay its own way.

(a) Additional revenue source helps development project to remain competitive with other projects by increasing capacity for enhanced public amenities and aesthetics of the area.

(b) It also enables a community to address local infrastructure needs while allocating the costs to those who directly benefit from the improvements. Elections regarding the issuance of debt, imposition of taxes and spending of revenues are limited to taxpayers of the Special District.

(c) A Special District can also facilitate the relationship between the approving city or county and the developer, as well as other entities, such as urban renewal or downtown development authorities and public improvement corporations to coordinate public infrastructure development on regional scale and develop creative financing structures through revenue- and/or cost-sharing arrangements that allow for leveraging of available funds.

(d) A Special District, in its capacity as a governmental entity, can provide for perpetual operation and maintenance of public improvements. From the taxpayer's perspective, payment of such costs with property taxes may be preferable to homeowner or business owner association dues.

B. District Formation Process and Governance

1. Procedure for Forming a Special District.

(a) The proponents of the Special District, usually the owner(s) of property that will be within the Special District, submit a Service Plan to the approving municipality or county.

(b) The approving jurisdiction conducts a public hearing on the Service Plan before approving it.

(c) Upon approval of the Service Plan by the approving jurisdiction, a Petition for Organization is filed with the District Court, requesting that the District Court order an election on the issues of formation of the Special District, election of the initial Board of Directors, and authority of the Special District to incur debt, impose taxes and fees, and expend revenues. Proposed election questions typically also include questions regarding the authority of the Special District to enter into intergovernmental agreements and term limits of directors. The

Petition for Organization must be signed by not less than thirty percent (30%) of the taxpaying electors of the proposed Special District or 200 people, whichever number is smaller.

(d) After conducting a hearing on the Petition for Organization, the District Court orders the organizational election to be held on the next available election date. Elections may generally be held in May and November of even-numbered years and November in odd-numbered years.

(e) The election results are certified by the District Court, which will then issue an Order and Decree declaring that the Special District has been duly organized. The organization of the Special District becomes effective upon the recording of the Order and Decree in the real property records of the county in which the Special District is located.

2. Service Plan Purpose and Requirements. The Service Plan is the basic governing document for the Special District, which sets forth the Special Districts powers and such limitations on its powers as may be imposed by the approving jurisdiction. By statute, the Service Plan must include:

(a) Description of proposed services – i.e., street, safety protection, water, etc.

Note: A Metropolitan District is a Special District that provides at least two types of improvements and services.

(b) Financial information.

(i) Financial plan that describes how the proposed improvements and services are to be financed, estimated first-year operating budget and proposed indebtedness, including a schedule for the issuance of such debt.

(ii) Initial proposed indebtedness.

(iii) Proposed maximum interest rate.

- (iv) Proposed maximum discounts.
- (c) Preliminary engineering or architectural survey showing how the services are to be provided.
- (d) Map of the Special District's boundaries.
- (e) Estimated population at build-out – residential and/or peak daytime for non-residential.
- (f) Estimated assessed valuation at build-out.
- (g) General description of facilities to be constructed and standards of construction, which must be compatible with those of the approving jurisdiction.
- (h) Estimated costs of land acquisition, engineering, legal and administrative costs, and costs related to the organization and initial operation of the Special District.
- (i) Description and form of any proposed intergovernmental agreements.
- (j) Other information or evidence to satisfy the criteria for approval set forth in Sections 32-1-203(2) and (2.5), C.R.S. (See Section B.3. below.)
- (k) Such additional information as may be required by the approving jurisdiction.

Other matters that are often addressed in Service Plans, but are not statutorily required include:

- (a) Cap on mill levy for debt service and/or operations and maintenance.
- Such cap may include a provision that allows for adjusting such cap to offset the effects of any changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement to ensure that the tax revenues generated by the mill levy are neither diminished nor enhanced as a result of such changes. This is commonly referred to as the “Gallagher adjustment.”

- (b) Authority to form enterprises as defined in the Colorado Constitution.

These are essentially government-operated business enterprises that charge and collect fees (rather than impose taxes) to pay for services provided.

- (c) Authority to create sub-districts consistent with service, programs and facilities furnished in particular areas of a Special District.

- (d) Authorization and/or limitations on the Special District's ability to include or exclude property into our out of its boundaries or service area.

3. Criteria for Service Plan Approval.

- (a) Mandatory Findings: Pursuant to Section 32-1-203(2), C.R.S., the approving jurisdiction *must* disapprove a Service Plan if any one of the following criteria are not satisfied:

- (i) There is sufficient existing and projected need for organized service in the area to be serviced by the Special District.

- (ii) Existing service in the area is inadequate for present and projected needs.

- (iii) The Special District is capable of providing economical and sufficient service to the area.

- (iv) The area in the Special District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

- (b) Optional Criteria: Pursuant to Section 32-1-203(20.5), the approving jurisdiction *may* disapprove a Service Plan if satisfactory evidence of any of the following is not presented.

(i) Adequate service is not, or will not be, available from another governmental entity within a reasonable and on a comparable basis.

(ii) The facility and service standards are compatible with those of the approving jurisdiction and other interested parties.

(iii) The Service Plan is in substantial compliance with the approving jurisdictions master plan.

(iv) The Service Plan is in substantial compliance with any duly adopted long-range water quality management plan for the area.

(v) The creation of the Special District will be in the best interest of the area to be served.

4. District Structure Considerations – Single vs. Multiple Districts.

(a) A single Special District is generally most appropriate where there is:

- (i) One land owner and developer;
- (ii) One land use (i.e. only commercial or only residential);
- (iii) A relatively short build-out period;
- (iv) Public improvements that benefit the entire development area.

(b) A structure of multiple Special Districts may be most beneficial in a development scenario where:

- (i) Multiple developers and/or landowners are involved;
- (ii) A mixed-use development is anticipated;
- (iii) An extended build-out period is expected;
- (iv) Multiple bond issues will be necessary;

(v) A complicated financing structure and various revenue sources and revenue sharing arrangements are anticipated.

In a multiple district structure, necessary public improvements may be financed in the most efficient and favorable manner so that services and facilities will be available when necessary, but not before necessary, through managed development and phasing. Multiple districts assure that the tax and fee burden on property owners is maintained at a reasonable level. Long-term interests of property owners and the developer are protected because development is implemented in phases, as is appropriate.

5. Special District Governance.

(a) A Special District is governed by a board of directors. The Special District Act provides that such board of directors will have either five (5) or seven (7) members.

(b) Directors are elected for staggered four-year terms at elections conducted the first Tuesday of May in even-numbered years.

(c) An eligible elector of a Special District is any individual who is registered to vote in Colorado and:

(i) Resides within the Special District; or

(ii) Owns taxable property within the boundaries of the Special District, which includes a person who is under contract to purchase property within the Special District that obligates the purchaser to pay taxes on such property; or

(iii) Is a spouse of a person who owns taxable property within the boundaries of the Special District.

C. Legislative and Service Plan Protections for District Constituents

1. Background - 1970's – 1980's Recession. In the late 1970's and early 1980's, Colorado experienced substantial growth which placed an unprecedented demand on existing infrastructure. In order to address the needs of existing and planned communities for the necessary infrastructure to support this growth, cities and counties approved many new developments and the organization of many special districts. Most of the service plans for these special districts allowed the issuance of unlimited general obligation bonds. When those bonds were issued, they were sold to both institutional and individual investors. With the downturn of the economy in the late 1980's, growth did not occur as projected and several special districts which had issued unlimited general obligation bonds at higher interest rates found themselves in a situation where they could not meet their annual debt service obligations. This resulted in the imposition of exorbitant mill levies and the filing of bankruptcy by several of the districts and the restructuring of their outstanding obligations. The problems of these districts were played out in the media which has caused some jurisdictions to be wary of continuing to utilize such a mechanism to finance necessary public infrastructure.

Current economic conditions have jurisdictions seeking assurance that the effects of the 1980's recession will not result today. However, as a result of the aforementioned occurrences, statutory limitations, service plan limitations, and other controls have been instituted and are exercisable by the approving jurisdiction to provide the necessary controls to limit the risk to the property owners and investors. Regardless of economic conditions, special districts are still an important mechanism for financing the infrastructure needs of new development and re-development. They are being utilized in most jurisdictions in Colorado to foster economic development. The following is a description of statutory limitations and other controls

exercisable by an approving jurisdiction which provide necessary controls to limit risks and to protect homeowners and ultimate users of public infrastructure funded by Special Districts.

2. Legislative/Statutory Limitations

(a) Constitutional Restrictions on Local Government Financing. In November of 1992, the Colorado voters approved Amendment No. 1, referred to as the Taxpayer's Bill of Rights ("TABOR"), which added a new Section 20 to Article X of the Colorado Constitution. TABOR contains tax, spending, revenue and debt limitations which apply to the State of Colorado and all local governments. In order for a city, county or Special District to issue additional indebtedness or to increase taxes, it must gain the approval of the electorate within its boundaries. This can prove to be difficult if what the electorate is being asked to approve is indebtedness for improvements which will primarily benefit new development. If a Special District mechanism is utilized, the properties within the boundaries of the District must approve the indebtedness, as those properties will be encumbered by the debt.

(c) Limitation on Issuance of Debt (Section 32-1-1101(6), C.R.S.). The Colorado legislature has made several changes which provide additional controls on the ability of Special Districts to issue indebtedness. For example, the total amount of general obligation debt that a Special District can issue shall not at the time of issuance exceed the greater of two million dollars (\$2,000,000) or fifty percent (50%) of the valuation for assessment of the taxable property in the Special District, unless the mill levy pledge for debt repayment is capped at 50 mills or less and except for debt which is:

(i) rated in one of the four highest investment grade rating categories by one or more nationally-recognized organizations which regularly rate such obligations; or

(ii) determined by the Special District to be necessary to construct or otherwise provide additional improvements specifically ordered by a federal or state regulatory agency; or

(iii) secured as to the payment of the principal and interest on the debt by a letter of credit, line of credit, or other credit enhancement, any of which must be irrevocable and unconditional, issued by a depository institution which meets certain net worth and regulatory capital requirements; or

(iv) issued to financial institutions or institutional investors.

(d) Registration. In addition, pursuant to Section 11-59-101, et. seq., C.R.S., the “Colorado Municipal Bond Supervision Act,” any issuance of bonds by a Special District (not otherwise exempt) must be registered with the State Securities Commissioner. The issues which would qualify as exempt are those which reduce the risk to bondholders and future property owners as part of the bond structure, such as bonds secured by insurance or letters of credit, bonds sold through private placement or bonds which are rated.

(e) Quinquennial Finding. The authority of a county or city to review the ability of a Special District to incur and repay debt and implement the other provisions of its Service Plan was increased by the passage of Section 32-1-1101.5 (1.5), C.R.S. Pursuant to such provision, a city or county has the power, at its discretion, to periodically require a Special District to provide financial information regarding the Special District’s debt and operations and to limit the authority of the Special District to issue additional general obligation debt and, if appropriate, trigger a Service Plan amendment process.

(f) Notification. Pursuant to Section 38-35.7-101, C.R.S., every contract for the purchase and sale of residential real property is required to contain a disclosure statement in

bold-faced type which, in essence, notifies a potential purchaser that property owners in Special Districts may be placed at risk for increased mill levies and additional tax burdens to support the servicing of such debt.

Pursuant to Section 10-11-122, C.R.S., title companies are required to provide, along with each title commitment issued for the sale of residential real property, a statement disclosing that the property may be located in a Special District, that a certificate of taxes due listing each taxing jurisdiction may be obtained from the county treasurer and that the information regarding Special Districts and the boundaries of such Special Districts may be obtained from the Board of County Commissioners, the County Clerk and Recorder, or the County Assessor.

(g) Open Meetings and Open Records. Although not instituted as a result of the 1980s recession, it is important to note that Special Districts are subject to the Open Meetings Law, Section 24-6-402, C.R.S. and the Open Records Act, Sections 24-72-201 – 309, C.R.S.

3. Governing Jurisdiction Restrictions. As has been mentioned, in order for a Special District to be organized, the petitioners must obtain the approval of a service plan for the proposed Special District from the jurisdiction in which the property is located. In order to address the concerns outlined above, many jurisdictions have been imposing controls in the documents governing the existence and operations of Special Districts, including debt service mill levy caps, maximum debt issuance authorizations and annual reporting requirements.

4. Summary. If the service plan for a Special District contains the controls as described above and bonds are issued, property owners will be protected from exorbitant tax increases if the development does not perform as expected and the district is unable to pay all of its debt service payments in accordance with the bond repayment schedule. Neither the

approving jurisdiction nor the individual property owners within the Special District will have any liability for the bonds (other than the property owners' obligation to pay taxes equal to the maximum mill levy the Special District is authorized to impose) in the event the maximum mill levy is not sufficient to cover the debt service.

D. Title 32 Special District Authority to Issue Debt

1. What can a Special District finance? The following list includes the types of improvements that a Special District is authorized by statute to provide: Streets, Safety Protection (traffic signals and controls); Parks and Recreation; Water; Sanitation; Transportation; Mosquito Control; Television Relay and Translation; Fire Protection Improvements. Storm Drainage Improvements are also authorized to be constructed under either the street or sanitation powers. Please see Section A.3., above, for a more specific list of public improvements that may be provided by Special District.

2. How are Special District Improvements Financed? Special District improvements are typically financed by the issuance of tax-exempt bonds, to be repaid from Special District revenues as set forth below. The approving jurisdiction is not obligated for the Special District's debt. Financing may come in the form of:General Obligation Bonds. Special Districts are authorized to issue general obligation bonds, secured by ad valorem property taxes, through the imposition of a mill levy.

(b) Revenue Bonds. Revenue bonds are payable from any revenue source of the district. Payment for revenue bonds is generated through fees, charges or other non-tax revenues collected from district residents and customers, and such fees are not tax deductible.

(c) Grants and Loans. Through the Colorado Division of Local Government and other state and federal agencies and programs, a Special District can be eligible for infrastructure improvement grants and/or very low interest loans under a variety of programs.

3. What are a Special District's Sources of Revenue? A Special District's primary source of revenue is from property taxes. Secondary sources of revenue include development fees imposed on properties within the Special District, user fees collected from those that use the District's services and revenues from a proportionate share of specific ownership taxes collected on motor vehicles. Property taxes are paid annually by property owners within the Special District. Special District property taxes are collected by the assessor of the county in which the Special District is located at the same time and in same manner as other property taxes. Along with other taxing entities, the Special District is required to certify a mill levy by December 15th of each year which determines the taxes paid by each property owner in the following year. Generally, part of the total mill levy is certified for administrative and operation costs of the Special District, while the remainder of the mill levy is certified for repayment of bonds issued by the Special District.

In addition to these direct sources of revenues, Special Districts may receive revenues as a result of revenue sharing arrangements with various entities. Other revenue sources include but are not limited to shared sales tax revenues, tax increment revenues and public improvement fees.

4. Protections for Property Owners and Bond Purchasers. If the Service Plan contains a mill levy cap of 50 mills, as described above, and bonds are issued, property owners will be protected from exorbitant tax increases if the development does not perform as expected and the Special District is unable to pay all of its debt service payments in accordance with the

bond repayment schedule. Neither the approving jurisdiction nor the individual property owners within the Special District will have any liability for the bonds (other than the property owners' obligation to pay taxes equal to the maximum mill levy the Special District is authorized to impose) in the event the maximum mill levy is not sufficient to cover the debt service. The bondholders and the developer are taking all of the risk in the event that the maximum mill levy is insufficient to repay the bonds.

The provisions of the Colorado Municipal Bond Supervision Act, which are discussed in more detail below, require that Special District bonds be issued pursuant to a full registration or by qualification for an exemption from registration. To our knowledge no bonds have been issued by registration since the act became effective in January 1992. The criteria for exemption restricts the pool of potential purchasers of non-rated Special District bonds or requires credit enhancement of the bonds. This assures that the risk to be taken by the purchasers of non-rated bonds is taken by sophisticated investors able to evaluate and assume the risk and negotiate for interest reserves and collateral for repayment of the bonds to protect themselves from the potential of a bond default.

E. Other Types of Improvement Districts (SIDs, LIDs, GIDs, PIDs, and BIDs)

1. What Is An Improvement District As Compared To A Special District?

Title 32 Special Districts fill a specific need in providing both a financing mechanism and long-term custodian for the public improvements needed in new communities and redevelopment projects, when counties and cities are unable to do so. However, there are other types of districts, known generically as “improvement districts,” that Colorado counties and municipalities may use to finance public infrastructure in lieu of or in conjunction with Special

Districts. Where the needs of a municipality or county are particular to a neighborhood, a unique need of a developer, or an older subdivision, or where a municipality or county desires more control than a Title 32 District can provide, these districts may be a more appropriate vehicle for meeting those needs.

These districts commonly are referred to by the acronyms SID, GID, LID, PID, and BID. Special improvement districts (“SIDs”) and general improvement districts (“GIDs”) are organized by a municipality under Sections 31-25-501, et seq., C.R.S., and Sections 31-25-601, et seq., C.R.S., respectively. Local improvement districts (“LIDs”) and public improvement districts (“PIDs”) are organized by a county under Sections 30-20-601, et seq., C.R.S., and Sections 30-20-501, et seq., C.R.S., respectively. Business improvement districts (“BIDs”) are entities organized by a municipality under Sections 31- 25-1201, et seq., C.R.S.

The following is a comparison of Special Districts, SIDs, GIDs, LIDs, PIDs and BIDs available under the Colorado Revised Statutes. In comparing these districts, the following issues will be addressed:

- (a) The procedures for organization of each type of district.
- (b) The permitted improvements for each type of district.
- (c) The revenue-raising powers and procedures for each type of district.
- (d) The governing body for each type of district.

The discussion below describes each type of district. It should be noted that this section focuses on state statutory provisions only. Each home-rule municipality may have its own charter provisions which can vary from state law and should be reviewed with regard to any districts within home-rule municipalities. In addition, some counties have adopted specific rules and regulations with respect to the formation of certain types of districts.

2. Municipal Special Improvement Districts (SIDs) and County Local Improvement Districts (LIDs) - Generally

(a) General

SIDs and LIDs are often referred to as “assessment districts” because they primarily raise revenue through the levy of special assessments. A SID is formed by a municipality; its counterpart, a LID, is formed by a county. Accordingly, these two types of districts are discussed together, although there are differences between these two types of districts. SIDs and LIDs are not separate political subdivisions, and they have no independent existence apart from the municipality or county. These districts are geographical areas within which improvements are constructed and paid through assessments levied in such areas. Both can include property from another jurisdiction with the consent of that jurisdiction. Following is a more detailed examination of each of aspect of SIDs and LIDs.

3. Municipal SIDs - Sections 31-25-501, et seq., C.R.S.

(a) Formation. The creation of a SID may be initiated by petition of owners of property within the proposed SID or ordinance or resolution adopted by the municipality. Section 31-25-503, C.R.S. Notice, publication and public hearing procedures must be followed; however if this type of district is formed by petition of 100% of the owners of property, the municipality may waive such requirements. If initiated by resolution or ordinance, property owners subject to more than 50% of the total proposed assessment of such a district may protest the formation of the district and prevent its formation. The final step in creation of a SID, barring protest, is adoption of an ordinance or resolution establishing the SID. No election is required for organization of a SID; however an election is required for a SID to incur debt and to authorize revenue and spending under TABOR.

(b) Permitted Improvements.

(i) SIDs are allowed to construct, install or acquire any improvement authorized under the municipality's powers. Sections 31-25-502 and 503(10), C.R.S. Such improvements may include to grade, pave, curb, gutter, provide parking facilities or otherwise improve any street or alley, including the reconstruction, replacement, renewal or extension of the same. SIDs can also provide improvements which benefit the land abutting such street and alley improvements, such as sidewalks, water mains, sewers, and sewage disposal works, heating and cooling mains for the distribution of heat and cooling obtained from geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and cogenerated heat. Artificial lighting systems and sewers and sewer disposal works are also permitted improvements. As of May 27, 2008, SIDs may also provide energy efficiency improvements and renewable energy improvements.

(ii) The municipality is authorized to enter into contracts and agreements with any owner of property within the district or any other person concerning the construction or acquisition of improvements, the assessment of the costs thereof, the waiver or limitation of legal rights, or any other matter relating to the SID. Section 31-25-503(10), C.R.S.

(iii) SIDs are not authorized by law to conduct or fund ongoing operational activities.

(iv) SIDs do not have the power of condemn property in order to provide for the permitted improvements.

(c) Revenue-Raising Powers.

(i) SIDs may assess the costs of the improvements against property that is "specially benefited". The intersections of streets and alleys may be assessed on property,

without regard to lot or land lines, on a frontage, zone or other equitable basis, in accordance with benefits, as the same may be determined by the governing body. Section 31-25-513(1), C.R.S. Such assessments are normally due within a specific time frame or in installments. Section 31-25-527, C.R.S. The assessments constitute a perpetual lien on the property, and the assessment ordinance is to be recorded against assessed property. Section 31-25-522, C.R.S. The lien may be foreclosed on in the same manner as foreclosures for property taxes or pursuant to judicial foreclosure under Sections 31-25-1101, et seq., C.R.S.

(1) Special assessments are subject to limitations. Special assessments may not be levied in an amount greater than the special benefit conferred on such property. Special assessments must be distributed equitably over the benefited properties in order to be valid. Factors to be considered in determining special benefits include increase in market value, change in use of a property to a more superior or profitable use, better access, and reduced maintenance costs. Section 31-25-507, C.R.S.

(2) If the municipality determines that any improvement authorized to be provided by a SID results in a special benefit to the municipality as well as property owners within the district, the municipality may allow for that portion of the cost of the improvements benefiting the municipality to be assessed directly against the municipality and payable in the same manner as for property within the district. Section 31-25-513(2), C.R.S.

(ii) SIDs may issue special assessment and/or revenue bonds. Section 31-25-534, C.R.S. Such bonds are payable from the revenues derived from the special assessments. Whenever three-fourths of the bonds issued for a constructed improvement have been paid, and the remaining assessments are not timely paid, the municipality must pay the debt

service on the bonds and reimburse itself by collecting the assessments. Section 31-25-534(1), C.R.S.

(iii) SIDs may issue interim warrants as work proceeds in the improvement district. Section 31-25-541, C.R.S.

(iv) SIDs may not issue general obligation bonds. However, the municipality may issue its general obligation bonds to help defray the costs of a SID's improvements, but in such case the electors of the entire municipality would have to approve the contracting of indebtedness. Section 31-25-533, C.R.S.

(d) Governing Body.

The governing body of the municipality serves as the governing body of the SID. There is no separate board for a SID. Section 31-25-502, C.R.S.

4. County LIDs - Section 30-20-601, et seq., C.R.S.

(a) Formation. The creation of a LID may be initiated by petition or ordinance or resolution adopted by the county (or City and County, where appropriate). Section 30-20-603, C.R.S. Notice, publication and public hearing procedures must be followed; however if this type of district is formed by petition of 100% of the owners of property, the county may waive such requirements. If initiated by resolution or ordinance, property owners subject to more than 50% of the total proposed assessment of such a district may protest the formation of the district and prevent its formation. The final step in creation of the district, barring protest, is adoption of an ordinance or resolution establishing the district. No election is required for formation of a LID; however an election is required for a LID to incur indebtedness or to impose a sales tax, and to authorize revenue generation and spending under TABOR.

(b) Permitted Improvements.

(i) LIDs are allowed to construct, grade, pave, pour, curb, gutter, line or otherwise improve any street, or to provide street lighting or drainage facilities in the unincorporated area of a county, or within a municipality, so long as the municipality consents to the improvements. LIDs may not provide the same improvement as an existing Special District within the territory of such existing Special District unless the existing Special District consents. Section 30-20-603(1) (a), C.R.S. As of May 27, 2008, LIDs may also provide energy efficiency improvements and renewable energy improvements.

(ii) A LID may also construct sidewalks adjacent to any such streets or maintenance roads adjacent to any such drainage facilities. Section 30-20-603(1) (a), C.R.S. Under certain circumstances a LID may provide transportation services. Section 30-20-603(1) (a.5), C.R.S. Finally, LIDs may construct improvements for the transmission or distribution of water or for the collection or transmission of sewage. Section 30-20-603(1) (b), C.R.S.

(iii) In contrast to SIDs, LIDs are authorized to provide for the operation and maintenance of improvements that are funded by a sales tax imposed pursuant to the procedures described below in Section E.4 (c) (iii). Section 30-20-603(1) (c), C.R.S.

(iv) LIDs are also empowered to acquire any improvement which could be constructed by LIDs. Section 30-20-603(11), C.R.S.

(v) The board of county commissioners is authorized to enter into contracts and agreements with any owner of property within the district, or any other person, concerning the construction or acquisition of improvements, the assessment of costs thereof, the waiver or limitation of legal rights, or any other matter concerning the district. Section 30-20-603(12), C.R.S.

(c) Revenue-Raising Powers.

(i) Unless improvements are fully funded by a sales tax as described below, the board may assess the costs of the improvements against the property that is “specially benefited,” including the intersections of streets, may be assessed on property, without regard to lot or land lines, on a frontage, zone or other equitable basis, in accordance with benefits, as the same may be determined by the board. Section 30-20-604, C.R.S. Such assessments are normally due within a specific time frame or in installments. The assessments, together with interest, penalties, and the costs of collection, constitute a perpetual lien on the property, and the assessment resolution is to be recorded against assessed property. Section 30-20-610, C.R.S. The lien may be foreclosed on in the same manner as foreclosures for property taxes or pursuant to judicial foreclosure under Sections 31-25-1101, et seq., C.R.S.

(1) The same limitation for SIDs, that special assessments must be distributed equitably over the benefited properties in order to be valid, also applies to LIDs.

(2) If the board of county commissioners determines that any improvement authorized to be provided by a LID results in a special benefit to the county as well as property owners within the district, the county may allow for that portion of the cost of the improvements benefiting the county to be payable in the same manner as established for property within the district. Section 30-20-604(2), C.R.S.

(ii) A LID may issue special assessment and/or revenue bonds. Section 30-20-619, C.R.S.

(iii) In counties having a population greater than one hundred thousand, the board of county commissioners may levy a sales tax throughout a LID to fund all or a portion of the cost of construction, operation or maintenance of the improvements. Section 30-20-

604.5(1) and (7), C.R.S. A proposal for a district-wide sales tax must be referred to the registered electors of the county who reside within the boundaries of the district. Section 30-20-604.5(4), C.R.S.

(iv) The county may issue its general obligation bonds to help defray the costs of the LIDs improvements, but, in such case, the electors of the entire county would have to approve the contracting of indebtedness. Section 30-20-618, C.R.S.

(d) Governing Body.

The governing body is the governing body of the county in which the LID is located. There is no separate board for a LID. Section 30-20-601, C.R.S.

5. Municipal General Improvement Districts (GIDs) and County Public Improvement Districts (PIDs)

Both GIDs and PIDs are separate political subdivisions distinct from the jurisdiction in which they are created. Because they are distinct entities, they may include property in more than one jurisdiction if all other jurisdictions consent. These two types of districts will be discussed together as they are similar in the scope of their powers and revenue raising abilities.

GIDs and PIDs are allowed to construct a broader range of improvements than SIDs and LIDs. A GID or PID has the authority to construct and operate any improvement or provide any service that the governing body creating it is statutorily authorized to provide, with certain exceptions. In addition, these districts may operate and maintain the improvements.

While GIDs and PIDs may levy special assessments, another revenue source for these districts is through a property tax imposed on the property within the district. Both GIDs and PIDs are authorized to issue general obligation, revenue and special assessment bonds, which require an election (except in certain circumstances for revenue bonds).

6. Municipal GIDs - Section 31-25-601, et seq., C.R.S.

(a) Formation.

(i) The creation of the district may be initiated by not less than 30% or two hundred of the electors of the proposed district, whichever is less. Section 31-25-604(1), C.R.S. After publication, notice, and public hearings, an election is held and if the election is successful, the district is established upon recording of the ordinance. Section 31-25-608, C.R.S.

(ii) Alternatively, district creation may be initiated by petition of 100% of the owners of property in the district and following publication, notice and public hearings (which may be waived by the governing body of the jurisdiction), the district is created by ordinance or resolution of the governing body. Section 31-25-604(2) (e) (III), C.R.S.

(iii) No election is required for formation of a GID. An election is required, however, for a GID to incur indebtedness and to authorize revenue and spending under TABOR.

(b) Permitted Improvements.

(i) GIDs are allowed to construct, install, acquire, operate or maintain any authorized public improvement, or to provide any authorized service, so long as such improvement or service does not duplicate or interfere with any other municipal improvement and is generally described in the petition for organization. Public improvements or services shall not include any solid waste disposal site and facility, any transfer station and with certain exceptions, the transportation of trash, waste, rubbish, garbage or industrial waste products. Section 31-25-602(1), C.R.S.

(c) Revenue-Raising Powers.

(i) May levy ad valorem taxes. Section 31-25-612, C.R.S.

(ii) May charge rates, tolls and charges for services or facilities furnished by the district and pledge such revenue for the payment of any indebtedness of the district. Section 31-25-611(k), C.R.S.

(iii) May issue general obligation, revenue or special assessment bonds upon approval of district electors. Sections 31-25-611(1) (e) and 31-25-620, C.R.S.

(iv) An election is not required for revenue bonds if the revenue bonds are for a TABOR enterprise.

(d) Governing Body.

The governing body of a municipality serves as the governing body of the GID. Section 31-25-609, C.R.S.

7. County PIDs - Section 30-20-501, et seq., C.R.S.

(a) Formation.

(i) One alternative for the creation of the district may be initiated by not less than 30% or two hundred of the electors of the proposed district, whichever is less. Section 30-20-505 (1), C.R.S. After publication, notice, and public hearings, an election is held and, if the election is successful, the district is established upon recording of the resolution of the governing body. Section 30-20-509, C.R.S.

(ii) The second alternative is initiation by petition of 100% of the owners of property in the district. The publication, notice and public hearings (may be waived by the governing body of the jurisdiction). The district is then established by ordinance or resolution of the governing body. Section 30-20-505 (4), 508(4), C.R.S.

(iii) No election is required for formation of a PID. An election is required, however, for a PID to incur indebtedness and to authorize revenue and spending under TABOR.

(b) Permitted Improvements.

(i) PIDs are allowed to construct, install, acquire, operate or maintain any public improvement or for the purpose of providing any service so long as the county that forms the district is authorized to perform such service or provide such improvement under the county's home rule charter, if any, or the laws of this state, and so long as such improvement is generally described in the petition for organization. Public improvement or service shall not include any solid waste disposal site and facility, any transfer station and, with certain exceptions, the transportation of trash, waste, rubbish, garbage or industrial waste products. Section 30-20-503(3), C.R.S. Pursuant to Section 30-20-512(l) (h), C.R.S., a PID also has the power to operate and maintain district improvements.

(c) Revenue-Raising Powers.

(i) May levy ad valorem taxes. Section 30-20-514, C.R.S.

(ii) May charge rates, tolls and charges for any revenue providing services or facilities furnished by the PID and pledge such revenue for the payment of any indebtedness of the district. Section 30-20-512(1) (k), C.R.S.

(iii) May issue general obligation, revenue or special assessment bonds upon approval of the district electors. Section 30-20-512(1) (e), C.R.S.

(iv) An election is not required for revenue bonds if the revenue bonds are for a TABOR enterprise.

(d) Governing Body.

The governing body of the county in which the PID is located constitutes the ex officio board of directors of the PID. Section 30-20-510, C.R.S.

8. Municipal Business Improvement Districts (BIDs) Sections 31- 25-1201, et seq., C.R.S. BIDs are organized by municipalities for the specific purpose of promoting economic development of commercial property within that municipality.

(a) Creation.

(i) The BID district may consist only of commercial property, as specifically defined by statute. Section 31-25-1203(2), C.R.S. The service area of a BID may be broader than its boundaries and may include non-commercial property. Section 31-25-1203(10) C.R.S.

(ii) BIDs are organized within a municipality, initiated by petition. The petition must be signed by persons who own real or personal property in the service area of the proposed district having an assessed valuation of not less than 50% of the assessed valuation of all real and personal property within the service area and owning at least 50% of the acreage in the proposed district. Section 31-25-1205, C.R.S.

(iii) Because BIDs are comprised of commercial property, the statute provides for entities that are not natural persons, such as a corporation, to vote under certain circumstances. Section 31-25-1203(4) (a) (IV), C.R.S.

(iv) No election is required for formation of a BID. However, an election is required for a BID to incur indebtedness and to authorize revenue and spending under TABOR.

(b) Permitted Improvements.

(i) BIDs are allowed to construct, operate and maintain streets, sidewalks, curbs, pedestrian malls, traffic and safety devices, off-street parking facilities, drainage facilities, information booths, street lights, landscaping, statuary, fountains, bike paths, benches, restrooms and public meeting facilities. Section 31-25-1203(5), C.R.S.

(ii) BIDs may also provide for unique economic development activities with respect to planning or managing development activities; promotion or marketing of district activity; organization, promotion marketing and management of public events; activities in support of business recruitment, management, and development; security of businesses and public areas located within the district; and providing design assistance. Section 31-25-1212, C.R.S.

(c) Revenue Raising Authority.

(i) BIDs may impose property taxes, rates, tolls, and charges for services or improvements provided by the BID, and impose special assessments. Sections 31-25-1212(1)(k) and 31-25-1213, C.R.S.

(ii) BIDs may issue general obligation, revenue or special assessment bonds. An election is required for the issuance of bonds and levy of taxes by a BID. Section 31-25-1222, C.R.S.

(d) Governing Body. There are four alternatives for the governing body of a BID. The first is an ex officio board of the municipality. The second is an appointed board. The third is, where an urban renewal authority, GID or downtown development authority overlaps the BID. The governing body of one of the overlapping entities (the URA, GID or DDA) may be the

ex officio board of the BID. A board may also be elected by the electors of the district under certain circumstances. Section 31-25-1209, C.R.S.

F. Urban Renewal Authority

The Colorado Urban Renewal Law (the “Act”) provides URAs with wide latitude to accomplish revitalization of blighted areas. The statutes grant broad authority, giving URAs “all the powers necessary or convenient to carry out the purposes” of the Act. Section 31-25-105, C.R.S.

1. An Urban Renewal Authority (“URA”) has the following powers:

- (a) The powers necessary to carry out the purpose of the urban renewal law.
- (b) Sue and be sued, adopt and have a seal, perpetual existence, and adopt bylaws, orders, rules and regulations.
- (c) To undertake urban renewal projects, execute contracts and other documents, including advances, loans, grants and contributions from the federal government and other sources.
- (d) Provide for public facilities and improvements; dedicate property for public facilities, improvements and purposes; and agree to contract conditions related to such powers, including those attached to federal financial assistant.
- (e) Arrange for planning and zoning of an urban renewal area with the city (but does not usurp the municipality’s land use authority, unless such authority is expressly granted to the URA by the municipality).
- (f) Enter private property with consent of the owner to make surveys and appraisals and to obtain a court order to do so if the owner refuses permission.

(g) Acquire property by purchase, lease, option, gift, grant, bequest, devise or otherwise or by eminent domain. Note, the URA must have the consent of the owner of public property to condemn property devoted to a public use (such as a post office).

(h) Hold, improve, clear or prepare for redevelopment any property.

(i) Mortgage, pledge or otherwise encumber or dispose of property in accordance with the urban renewal plan.

(j) Insure property and operations of the URA.

(k) Invest funds.

(l) Borrow money and apply for loans, grants and contributions and give security therefor.

(m) Appropriate and spend funds and establish separate accounts.

(n) Prepare and submit proposed plans, including urban renewal plans to council.

(o) Make relocation plans/arrangements/payments to residents, individuals and businesses displaced by urban renewal projects.

(p) Rent or use equipment and office facilities for the authority.

(q) Prepare plans for a program of voluntary repair and rehabilitation of buildings and improvements and enforcement of applicable codes and regulations.

(r) Create and report methods and techniques for the prevention and elimination of blight within the city.

(s) Issue bonds for debt.

(t) An authority does not have the power to levy or assess taxes of any nature, including special assessments.

2. Formation of an Urban Renewal Authority. The process to form a URA is commenced by the submittal of a petition containing the signatures of 25 registered electors within a municipality indicating the need for a URA to function in the municipality.

3. Governing Board .A municipality must appoint a board to govern the URA, which may be an odd number of commissioners, at least five, but no more than eleven. A governing body may appoint a board from among members of the community, or appoint itself as the board, but once the URA is formed, the governing body may not substitute itself for an appointed board. The initial appointment is for staggered terms, with five-year terms thereafter.

4. Conditions Survey/Blight Study. The prerequisite to the establishment of a URA is sufficient evidence to support the governing body's finding of the existence of blighted area(s) within the city/town. The essence of the blighted study is documentation that at least four of the eleven factors outlined in the statute exist. Additionally, if eminent domain is to be used, five factors must be documented, as explained more fully below. To meet the statutory requirements for finding an area is blighted, at least four or five (if eminent domain is authorized) of the following factors of blight need to be found to have substantially and adversely affected or slowed the reasonable growth of the city, hindered the provisions of decent housing, or have constituted an economic or social liability to the city and, therefore, presents a detriment to the well-being of the community:

(a) Slum, deteriorated, or deteriorating structures. It is the process of deterioration or the existence of outmoded structures, which constitutes blight, not the total deterioration itself. The emphasis is upon the area as a whole and not individual structures; and

(b) Predominance of defective or inadequate street layout. This factor includes such conditions as inadequate street widths; dead ends; poor conditions of existing

streets; poor provisions or unsafe conditions for the flow of traffic, including pedestrians and bicycles; traffic congestion; inadequate emergency vehicle access; obsolete and impractical street layout; or inadequate facilities for traffic flow or movement through the area; and

(c) Faulty lot layout in relation to size, adequacy, accessibility or usefulness.

Such problems as long and narrow or irregularly sized properties; obsolete and impractical lot layout and configurations resulting in stagnant and unproductive conditions of the land by the misuse or nonuse of same are some of the elements of this factor; and

(d) Unsanitary or unsafe conditions. The area does not have to contain slums to qualify as blighted and require redevelopment. Elements of this factor may include the existence of a floodplain or flood prone area; inadequate storm drainage systems; poor fire protection facilities; high or unusual crime statistics; above average incidences of public safety responses; inadequate utility systems or lack of water or sanitary sewer systems; or existence of contaminants or hazardous materials or conditions; and

(e) Deterioration of site or other improvements on the site. Elements of this factor may include matters such as inadequate open space; lack of public utilities and public or private services; the incompatible mixture of residential, industrial, and commercial activities resulting in improper and unproductive use of the land; failure to use land, leaving it unproductive or for no public/private purpose; numerous vacancies; unwise planning and zoning; and poor regulatory code provisions or enforcement; and

(f) Unusual topography or inadequate public improvements or utilities.

Severe and significant slopes make use of property difficult, very expensive or impractical may be included in this factor; and some of the blight factors in No. 4 would also apply here; and

- (g) Defective or unusual conditions of title rendering the title unmarketable.

The considerations of this factor of blight include diversity and multiplicity of ownership making assemblage of land or accumulation of a single, large tract of land very difficult; and title problems such as the interruption of the chain of ownership or tracing of the ownership of the property; and

(h) The existence of conditions that endanger the life or property by fire or other causes. Factors such as buildings or property not in compliance with fire codes, building codes or environmental regulations (asbestos or soil contamination) may be applicable here; and

(i) Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities. Some of the blight factors in Nos. 1, 4, 5 and 8 would also apply here; and

(j) Environmental contamination of buildings or property. Blight factors in Nos. 4 and 8 would also apply here; and

(k) The existence of health, safety or welfare factors requiring high levels of municipal services or substantial physical and underutilization or vacancy of sites, building, or other improvements. If there is no objection by the property owner(s) and tenants of such owner(s), if any, to the inclusion of such property in a URA, “blighted area” also means an area that, in its present condition and use, and by reasons of the presence of any of the blight factors, substantially impairs or arrests the sound growth of the city, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals and welfare.

5. Urban Renewal Plan. At a minimum, an urban renewal plan should contain the following items:

- (a) Plans to eliminate and prevent the development or spread of slum or blighted areas and redevelopment of such areas with appropriate public and private resources;
- (b) Outline of preliminary plans for urban renewal activity;
- (c) Plans for relocation of individuals, families and businesses that will be displaced by the project (note: relocation policies must be consistent with the Relocation Assistance and Land Acquisition Policies of Section 24-56-101, C.R.S., et seq.);
- (d) Plans for programs of voluntary repair and rehabilitation of buildings and improvements;
- (e) Plans for enforcement of state and local laws, codes and regulations governing land use and use of buildings and improvements;
- (f) Authorization to use the powers of eminent domain, if so determined by council;
- (g) Documents necessary to carry out any of the above, including financing plans, maps, appraisals, surveys and studies; and
- (h) Disclosure of tax increment financing may be used to fund improvements.

The following summary delineates improvements, powers and organization procedures of Title 32 Special Districts as compared to the various improvement district structures.

	TITLE 32		IMPROVEMENT DISTRICTS			
	SPECIAL DISTRICTS	SIDs (municipal)	LIDs (county)	GIDs (municipal)	PIDs (county)	BIDs (municipal)
PERMITTED IMPROVEMENTS	Streets, water, sewer, storm drainage, parks and recreation, traffic control, fire, transportation, mosquito control and television relay and transmission	Streets, street lighting, sidewalks, water mains, sewers and sewer disposal works, heating and cooling mains, energy efficiency and renewable energy improvements.	Streets, street lighting, drainage, sidewalks, facilities for transmitting water or sewage.	Any public improvement. Except, <u>Cannot</u> construct electric light or gas systems, or solid waste disposal facilities.	Any public improvement. Except, <u>Cannot</u> construct electric light or gas systems, or solid waste disposal facilities.	Streets, sidewalks, curbs, pedestrian malls, landscaping, statuaries, fountains, bike paths, benches, and public meeting facilities, and business and economic development powers
POWERS						
Condemn property	Yes ¹	No	No	Yes	Yes	No
Operate facilities	Yes	No	No	Yes	Yes	Yes
Levy ad valorem taxes	Yes	No	No	Yes	Yes	Yes
Assess costs	See footnote 2 ²	Yes	Yes	Yes	Yes	Yes
Charge rates, tolls, charges	Yes	No	No	Yes	Yes	Yes
Issue bonds: GO Revenue Special assessment	Yes Yes Under certain circumstances ³	No Yes Yes	No Yes Yes	Yes Yes Yes	Yes Yes Yes	Yes Yes Yes
Levy sales tax	No	No	Yes	No	No	No
FORMATION						
Petition	Yes	Yes	Yes	Yes	Yes	Yes
Resolution/ ordinance (of Governing body)	Yes	Yes	Yes	No	No	No
Governing Board	Governed by elected Board of 5-7 members	Independent	Board of County Commissioners ⁴	Board of Governing Municipality	Board of County Commissioners	Four alternatives

¹ Special Districts can condemn property within and without their boundaries; however, they have no power to condemn water rights.

² A Special District can condemn property (but not water rights) within and without its boundaries.

³ A Special District can issue assessment bonds to encourage, accommodate and finance renewable energy and energy efficiency improvements through organization of a Special Improvement District within the Special District's boundaries.

⁴ LID Board can appoint an independent board of directors in certain circumstances (Section 30-20-604.5(9), C.R.S.)