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SENATE BILL 16-171

BY SENATOR(S) Martinez Humenik and Scheffel, Jones, Donovan, Johnston, Kefalas, Kerr;
also REPRESENTATIVE(S) Tyler and Becker J., Becker K., Duran, Melton, Mitsch Bush, Pettersen, Priola, Ryden, Salazar, Winter.

CONCERNING MODIFICATION AND CLARIFICATION OF THE STATUTES
PERTAINING TO THE NEW ENERGY IMPROVEMENT DISTRICT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 32-20-104, **amend** (2) (a) (II) introductory portion and (6) as follows:

32-20-104. Colorado new energy improvement district - creation - board - meetings - quorum - expenses - records. (2) (a) The district is governed by a board of directors, which shall exercise the powers of the district, shall, by a majority vote of a quorum of its members, select from its membership a chair, vice-chair, and secretary, and is composed of seven members, including:

(II) The following six members appointed by the governor: ~~by September 1, 2013:~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(6) The district ~~shall be considered~~ IS a special district included within the definition of the state or any of its political subdivisions FOR PURPOSES OF AND AS set forth in section 2 (14.6) of article XXVIII of the state constitution and ~~shall~~ IS, accordingly, ~~be~~ subject to the sole source contracting provisions of sections 15 to 17 of said article XXVIII.

SECTION 2. In Colorado Revised Statutes, 32-20-105, **amend** (3) introductory portion and (3) (i) as follows:

32-20-105. District - purpose - general powers and duties - new energy improvement program. (3) The district shall establish, develop, finance, and administer a new energy improvement program. However, the district may conduct the program within any given county only if the board of county commissioners of the county has adopted a resolution authorizing the district to conduct the program within the county. IF A COUNTY ADOPTS A RESOLUTION AUTHORIZING THE DISTRICT TO CONDUCT THE PROGRAM WITHIN THE COUNTY, THE COUNTY TREASURER SHALL RETAIN A COLLECTION FEE AS SPECIFIED IN SECTION 30-1-102 (1) (c), C.R.S., FOR EACH SPECIAL ASSESSMENT THAT IT COLLECTS AS PART OF THE PROGRAM. THE BOARD OF COUNTY COMMISSIONERS OF ANY COUNTY THAT HAS ADOPTED A RESOLUTION AUTHORIZING THE DISTRICT TO CONDUCT THE PROGRAM WITHIN THE COUNTY MAY SUBSEQUENTLY ADOPT A RESOLUTION DEAUTHORIZING THE DISTRICT FROM CONDUCTING THE PROGRAM WITHIN THE COUNTY. HOWEVER, IF THE COUNTY ADOPTS A DEAUTHORIZING RESOLUTION, THE COUNTY SHALL CONTINUE TO MEET ALL OF ITS OBLIGATIONS UNDER THIS ARTICLE AS TO PROGRAM FINANCING OBLIGATIONS EXISTING ON THE EFFECTIVE DATE OF THE DEAUTHORIZATION UNTIL ANY AND ALL SPECIAL ASSESSMENTS WITHIN THE COUNTY HAVE BEEN PAID IN FULL AND REMITTED TO THE DISTRICT. The district shall design the program to allow an owner of eligible real property to apply to join the district, receive reimbursement or a direct payment from the district, and consent to the levying of a special assessment on the eligible real property specially benefited by a new energy improvement for which the district makes reimbursement or a direct payment. The district shall establish an application process for the program that allows an owner of eligible real property to become a qualified applicant by submitting an application to the district and that may include one or more deadlines for the filing of an application. The application process must require the applicant to submit with the application a commitment of title insurance issued by a duly licensed Colorado title insurance company within thirty days before the date the application is

submitted. The district may charge program application fees. In order to administer the program, the district, acting directly or through a program administrator or other agents, employees, or professionals as the district may appoint, hire, retain, or contract with, may aggregate qualified applicants into one or more bond issues and shall:

(i) In connection with the financing of new energy improvements either by third parties pursuant to paragraph (h) of this subsection (3) or district bonds and in consultation with representatives from the banking ~~industry, counties, municipalities,~~ INDUSTRY and property owners, develop the processes to ensure that mortgage holder consent is obtained in all cases for all eligible real property participating in the program to subordinate the priority of such mortgages to the priority of the lien established in section 32-20-107.

SECTION 3. In Colorado Revised Statutes, 32-20-106, **amend** (3) (a) introductory portion, (4), (5), (7), and (8); and **repeal** (6) as follows:

32-20-106. Special assessments - determination of special benefits - notice and hearing requirements - certification of assessment roll - manner of collection. (3) (a) The district may levy a special assessment against eligible real property specially benefited by a new energy improvement based on the cost to the district of the new energy improvement. The district shall initiate the levy of any SPECIAL assessment by the adoption of a resolution of the board that sets the SPECIAL assessment, approves the preparation of a preliminary SPECIAL assessment roll, and sets a date for a public hearing regarding the SPECIAL assessment roll. The district shall prepare a preliminary SPECIAL assessment roll listing all special assessments to be levied. The district may post notice of the hearing on the SPECIAL assessment on any district internet website and shall send notice that the SPECIAL assessment roll has been completed and notice of a hearing on the SPECIAL assessment roll no later than thirty days before the hearing date to:

(4) The board shall prepare or cause to be prepared a district SPECIAL assessment roll in book form showing ~~in suitable columns~~ FOR each unit of eligible real property assessed, the total amount of SPECIAL assessment, the amount of each installment of principal and interest if the SPECIAL assessment is payable in installments, and the date when each installment will become due. ~~The assessment roll shall have suitable~~

~~columns for use in case of payment of the whole amount or of any installment or penalty. The board shall deliver the SPECIAL assessment roll, duly certified, under the corporate seal, for collection to the treasurer of each county in which the district has assessed eligible real property. After delivery of the assessment roll, the district may reduce the amount of any special assessment with the consent of the owner of the eligible real property on which the special assessment is levied NO LATER THAN DECEMBER 1 OF EACH YEAR.~~

(5) All special assessments shall be due AT THE SAME TIME AS and payable within thirty days after the effective date of the assessing resolution without demand, but all such assessments may be paid, at the election of the owner, in installments with interest as provided in subsection (6) of this section; except that the board may provide that special assessments be due and payable at such alternate time as set forth in the assessing resolution. Failure of a district member to pay the whole special assessment within said period of thirty days shall be conclusively considered and held to be an election on the part of the district member to pay in installments IN THE SAME MANNER AS PROPERTY TAXES, AS SPECIFIED IN SECTION 39-10-104.5, C.R.S.

(6) ~~In case of an election to pay in installments, the special assessments shall be payable in two or more installments of principal, which shall be payable as prescribed by the board over a period of not more than twenty years, with interest in all cases on the unpaid principal. The number and amounts of payment of installments, the period of payment, and the rate and times of payment of interest shall be determined by the board and set forth in the assessing resolution. The times of payment of installments shall be the same as the times of payment for installments of property taxes as specified in section 39-10-104.5 (2), C.R.S.; except that special assessments may be payable at such alternate times as provided by the board in the assessing resolution.~~

(7) Failure to pay any installment on special assessments, whether of principal or interest, when due shall give GIVES the district the right to declare the delinquent installments due and collectible immediately DELINQUENT, and upon such a declaration the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the SAME rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the day of sale AS DELINQUENT PROPERTY TAXES AS SPECIFIED IN SECTION

39-10-104.5 (3) (c), C.R.S. THE COUNTY TREASURER SHALL INCLUDE THE DELINQUENT INSTALLMENT AMOUNT AS PART OF THE TAX LIEN SALE. At any time prior to the day of THE TAX LIEN sale, the district member may pay the amount of ~~all unpaid~~ THE DELINQUENT installments, with interest at the penalty rate set by the assessing resolution, and all costs of collection accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not ~~been suffered~~. ~~A district member not in default as to any installment or payment may, at any time, pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal OCCURRED.~~

(8) (a) Payment of special assessments may be made to a county treasurer at any time ~~within thirty days after the effective date of the assessing resolution~~ AFTER THE COUNTY ASSESSOR HAS CERTIFIED THE TAX ROLL AND THE COUNTY TREASURER IS PREPARED TO ACCEPT PAYMENTS FOR THAT PROPERTY TAX YEAR, and the county treasurer shall ~~promptly forward all special assessment payments received to the district. At the expiration of the thirty-day period, each county treasurer of a county that includes eligible real property in the district shall return the district assessment roll for the county to the board, therein showing all payments made thereon, with the date of each payment. The roll shall be certified by the board under the seal of the board and by the board delivered to each county treasurer, with the treasurer's warrant for its collection. The county treasurer shall receipt the roll, and all such rolls shall be numbered or identified by county for convenient reference~~ REMIT ALL SPECIAL ASSESSMENTS COLLECTED, LESS THE COLLECTION FEE REQUIRED BY SECTION 32-20-105 (3), TO THE DISTRICT IN THE SAME MANNER AS TAXES ARE DISTRIBUTED IN ACCORDANCE WITH SECTION 39-10-107, C.R.S.

(b) ~~The EACH~~ owner of any divided or undivided interest in eligible real property assessed ~~may pay the owner's share of~~ IS JOINTLY AND SEVERALLY LIABLE FOR THE FULL AMOUNT OF any SPECIAL assessment. ~~upon producing evidence of the extent of the owner's interest satisfactory to the treasurer having the roll in charge; except that the~~ A SPECIAL assessment lien ~~shall remain~~ REMAINS on the entire property assessed until the entire SPECIAL assessment is paid, except as otherwise provided pursuant to section 32-20-107.

SECTION 4. In Colorado Revised Statutes, 32-20-107, **amend** (1) (a) (I), (1) (a) (II) introductory portion, (1) (a) (II) (A), (1) (b), (2), (3), (4)

(a), (4) (b), (4) (c), and (4) (d); **add** (4) (g); and **repeal** (4) (e) as follows:

32-20-107. Special assessment constitutes lien - filing - sale of property for nonpayment. (1) (a) A special assessment, together with all interest thereon and penalties for default in payment thereof, and associated collection costs constitutes, from the date of the recording of the assessing resolution and assessment roll pursuant to subsection (2) of this section, a perpetual lien in the amount assessed against the assessed eligible real property and has priority over all other liens; except that:

(I) General PROPERTY tax liens have priority over district special assessment liens;

(II) A district special assessment lien has priority over preexisting liens only if each lienholder consents as specified in section 32-20-105 (3) (i) and each consent and the ~~assessment lien~~ SPECIAL ASSESSMENT LIEN AND SPECIAL ASSESSMENT ROLL are recorded in the real estate records of the county where the property is located. Before the recording of the ~~assessment lien~~ SPECIAL ASSESSMENT LIEN AND SPECIAL ASSESSMENT ROLL, the applicant must submit to the district:

(A) Written consent to the SPECIAL assessment by all individuals or entities shown on a commitment of title insurance as holders of mortgages or deeds of trust encumbering the applicant's property; and

(b) Neither the sale of eligible real property OR TAX LIENS in the district to enforce the payment of general ad valorem taxes nor the issuance of a treasurer's deed in connection with the sale extinguishes the lien of a special assessment. If assessed eligible real property is subdivided, the board may apportion the SPECIAL assessment lien in the manner provided in the assessing resolution.

(2) The district shall transmit to a county clerk and recorder of a county that includes eligible real property included in the district copies of the district's assessing resolution after its final adoption by the board and the assessment roll for recording on the land records of each unit of eligible real property assessed within the county as provided in article 30, 35, or 36 of title 38, C.R.S. The assessing resolution and assessment roll shall be indexed in the grantor index under the name of the district member and in the grantee index under the Colorado new energy improvement district. In

addition, the county clerk and recorder shall file copies of the assessing resolution, after its final adoption by the board, and the assessment roll with the county assessor and the county treasurer. The county assessor is authorized to create separate schedules for each unit of eligible real property assessed within the county pursuant to the resolution. ~~In assessing the value of eligible real property, the county assessor shall not take into account any increase in the market value of the eligible real property resulting from the completion of a new energy improvement.~~

(3) No delays, mistakes, errors, or irregularities in any act or proceeding authorized or required by this article shall prejudice or invalidate any final SPECIAL assessment, and such mistakes, errors, or irregularities may be remedied by subsequent filings, amending acts, or proceedings. A remedied SPECIAL assessment ~~shall take~~ TAKES effect as of the date of the original filing, act, or proceeding. If a court of competent jurisdiction sets aside any final assessment or if, for any other reason, the board determines it to be necessary to alter any final SPECIAL assessment, the board, upon notice as required in the making of an original SPECIAL assessment, may make a new SPECIAL assessment in accordance with the provisions of this article.

(4) (a) In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell the assessed eligible real property tax lien defaulted upon for the payment of the whole of the unpaid installment of principal and interest. Advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real ~~estate~~ PROPERTY tax liens in default of payment of the general property tax.

(b) At any TAX LIEN sale by a county treasurer of any eligible real property, ~~for the purpose of paying a special assessment,~~ the board may ~~purchase the property for the district without paying for the property in cash~~ PARTICIPATE IN THE TAX LIEN SALE AUCTION BY BIDDING ON THE LIEN FOR THE DISTRICT and ~~shall~~ receive certificates of purchase for the ~~property~~ LIEN in the name of the district IF IT IS THE SUCCESSFUL BIDDER. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessment installment in pursuance of which the sale was made. The board may thereafter sell the certificates at their face value, with all interest and penalties accrued, and assign the

certificates to the purchaser in the name of the district. The board shall credit the proceeds of the sale to the fund created by resolution for the payment of the SPECIAL assessments, respectively; except that, if the new energy improvements were financed under section 32-20-105 (3) (h), the board shall credit the proceeds of the TAX LIEN sale to the private third party that financed the new energy improvements. If the district has repaid all special assessment bonds in full, the board may sell the certificates for the best price obtainable at public sale, at auction, or by sealed bids in the same manner and under the same conditions as provided in paragraph (d) of this subsection (4). Such assignments are without recourse, and the sale and assignments operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of the general property ~~tax~~ TAXES.

(c) The board, as a purchaser OF TAX LIENS, has the right to apply for tax deeds on certificates of purchase at any time after three years from the date of issuance of the certificates IN ACCORDANCE WITH ARTICLE 11 OF TITLE 39, C.R.S., and the deeds shall be issued as provided by law for issuance of tax deeds for the nonpayment of the general property ~~tax~~ TAXES OR SPECIAL ASSESSMENTS.

(d) Cumulatively with all other remedies, the district, as the owner of property by virtue of a tax deed, ~~or of property otherwise acquired, in satisfaction or discharge of the liens represented by certificates of sale,~~ may sell the property for the best price obtainable at public sale, at auction, or by sealed bids. A sale shall be held after public notice by the board to all persons having or claiming any interest in the eligible real property to be sold or in the proceeds of the sale by publication of the notice three times, a week apart, in a weekly or daily newspaper of general circulation within the county in which the property is located. The notice shall describe the property and state the time, place, and manner of receiving bids; except that the time fixed for the sale shall not be less than ten days after the last publication. The board may reject any and all bids. Any interested party, at any time within ten days after the receipt of bids for the sale of property, may file with the board a written protest as to the sufficiency of the amount of any bid made or the validity of the proceedings for the sale. If the protest is denied, the protestor, within ten days thereafter, shall commence an action in a court of competent jurisdiction to enjoin or restrain the board from completing the sale. If no such action is commenced, all protests or objections to the sale shall be waived, and the board shall then convey the

property to the successful bidder by quitclaim deed.

~~(e) In addition to all other remedies, the district, as a holder of certificates of purchase, may bring a civil action for foreclosure thereof in accordance with article 38 of title 38, C.R.S., joining as defendants all persons holding record title, persons occupying or in possession of the property, persons having or claiming any interest in the property or in the proceeds of a foreclosure sale, all governmental taxing units having taxes or other claims against the property, and all unknown persons having or claiming any interest in the property. Any number of certificates may be foreclosed in the same proceeding. In such a proceeding, the district, as plaintiff, is entitled to all relief provided by law in actions for an adjudication of rights with respect to real property, including actions to quiet title.~~

(g) IF A TREASURER'S DEED IS ISSUED FOR A PROPERTY THAT IS INCLUDED WITHIN THE DISTRICT PURSUANT TO SECTION 32-20-105 AND UPON WHICH A PRIORITY SPECIAL ASSESSMENT LIEN HAS BEEN PLACED, THE DISTRICT SHALL USE ITS RESERVE ACCOUNT TO SATISFY SPECIAL ASSESSMENT OBLIGATIONS OF THE PROPERTY ON BEHALF OF THE HOLDER OF THE TREASURER'S DEED IN ACCORDANCE WITH THE TERMS AND DURATION SPECIFIED IN A WRITTEN AGREEMENT BETWEEN THE COUNTY IN WHICH THE PROPERTY IS LOCATED AND THE DISTRICT.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO