THE PUBLICAZATION OF PRIVATE BUSINESS

Ever since the Gold Rush of 1859, Colorado land speculators have sought governmental institutions that maximized profit and protected their investments. Initially they formed "town companies" to sell lots, but long ago the practice of creating new towns and cities was abandoned. Over the past few decades developers have adopted metropolitan districts as the preferred form of government to accomplish those goals.

Colorado is considered by most people a relatively small-government state. We rank near the bottom of all states in state tax collections and state government expenditures as a proportion of State Gross Domestic Product (GDP). However, we also stand out for the size of our system of local government, ranking in the top ten states for local tax collections, and exceeding the national average in local government expenditures, as a proportion of State GDP. Perhaps it's not surprising that local government employees outnumber state employees by a ratio of 3:1.

Ranking in the top ten states for sheer numbers of local governments, Colorado is #1 in number of governments per capita. We rank in the middle (#22) of all states for the number of general-purpose governments (cities, towns and counties), but #4 in number of special districts, behind California, Texas and Illinois.[1]

An analysis of governmental revenue over the past twenty years indicates that local revenue from their own sources has grown at an average annual rate of 6.8% per year, while own source state government revenue has grown at an average annual rate of 5.3% per year.

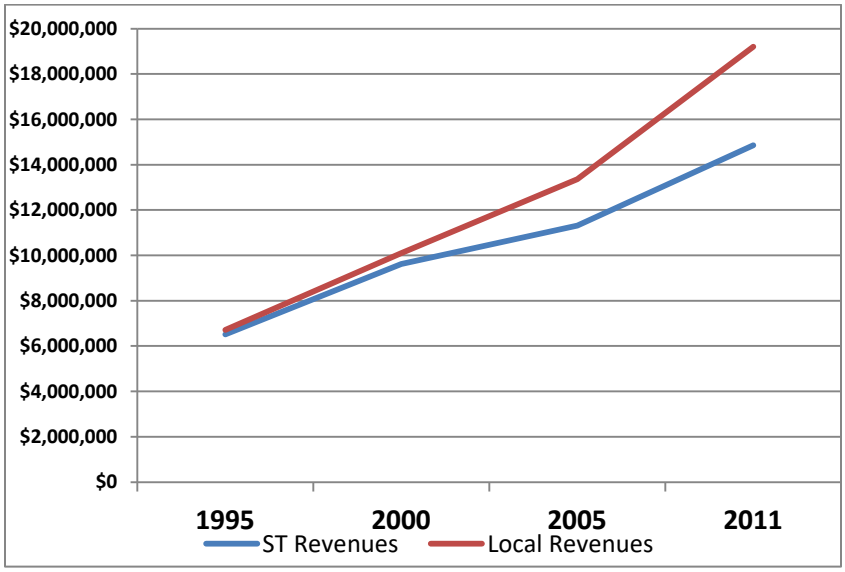

Figure 1 - State vs. Local Own Source Revenue, 1995-2011 (in $ Thousands)

[1] All statistics cited in these opening paragraphs are from the U.S. Census Bureau, 2012 Census of Governments. Discussions of most of these data can be found in Legislative Council Issue Briefs No. 12-07, *How Colorado Compares in State and Local Taxes*, and No. 14-08, *State and Local Government as a Proportion of the State Economy*.

This trend is reflected in the growth of the sheer number of local governments that have grown over that time period, as compared with state revenue[2].

Some people appreciate our decentralized system of governance with its emphasis on local units, considering it to offer the most local control and least interference from a big, more centralized agency, so from that perspective the dominance of local government in these statistics makes sense. The population growth in the state over the past 30 years has been reflected by a marked increase in local government units, predominantly special districts. And the largest increase by type of district by far is found in the number of metropolitan districts. No other type of local government in the state has grown at anywhere near their rate. The three most numerous types of districts in the state are water & sanitation districts, fire protection districts and metropolitan districts, shown in Table 1 below.

Type of Local Government	Total Active	Formed since 1980
Water and Sanitation Districts[3]	270	64
Fire Protection Districts	255	89
Metropolitan Districts	1520	1335

Table 1. Most numerous types of Colorado special districts created from January 1980 to September 2016

When we examine the list of all active local governments in Colorado today, 41% (1,520) of them are "metropolitan districts."[4] What is it about these districts that make them so popular?

METROPOLITAN DISTRICTS

Metropolitan districts in Colorado occupy an obscure corner of our system of governance, of which many people are not aware, even many of those who live within their boundaries and pay their taxes. They were devised to "secure for the inhabitants thereof any two or more of the purposes of providing domestic water, sewer disposal and sanitation, fire protection, or safety protection," according to Colorado's 1953 statutory law.[5] Originally designed to provide these urban services to properties that otherwise would not be able to acquire them; they have since that time become useful for another purpose, unstated in the law. They are now the first choice of land developers to use as mechanisms to finance the public improvements necessary for new development, even when within a city or near another special district where those services are otherwise readily available. They also allow developers to retain control of the development with minimum risk or accountability. Dusty corners of the laws governing these districts have been enacted by the legislature and governor over the years, which permit private corporations to create metropolitan districts to serve private purposes, and control them as

[2] "Own source revenue" includes taxes and fees, but excludes grants and other intergovernmental transfers.
[3] This includes Water Districts (77), Sanitation Districts (70) and Water and Sanitation Districts (which provide both services – 123).
[4] See Attachment 1
[5] Colorado Revised Statutes of 1953 §89-3-3, the Metropolitan District Act of 1947.

though they were wholly-owned subsidiaries of their corporate interests. Many were not initially organized to provide "services for the inhabitants thereof," since most metropolitan districts are formed to incur debt for the development of raw land where there are not yet any inhabitants.

State records show that one metropolitan district created prior to 1960 is still operating today. Of currently active districts, 48 more were created between 1960 and 1980. The 1471 other metropolitan districts active today have all been created since 1980, as shown in Table 2 below.

by 1980	49
1980s	118
1990s	101
2000s	936
2010s	316
Total	1520

Table 2. Metropolitan Districts by Decade Formed 1/1/1980 to 9/15/2016[6]

Prior to 1980, the most popular mechanism for financing improvements in new development was with water and sanitation districts, since most counties did not provide those basic services, and many municipalities were reluctant to do so outside their boundaries. Now it seems that these general purpose governments are happy to cede control of virtually all services to developers, except for those "police powers" that cannot be delegated.[7] In fact, there are relatively large municipalities today, some incorporated after 1980, which do not provide water, sanitary sewer or fire protection to any of its residents; these services are provided by special districts.

In 1985, the legislature became concerned when stories surfaced of special districts lying dormant for many years and suddenly reviving to begin operation, surprising some counties that had forgotten they existed. The Special District Act was then amended to allow the state to administratively dissolve a district if it had failed to 1) conduct or properly cancel a biennial board election, 2) adopt an annual budget, 3) compile an annual financial statement, or 4) had not provided any of the services for which the district was organized, if it did not have any outstanding financial obligations.[8] Under this provision, the state has dissolved about 50 districts that had failed to perform these basic management functions.

Then, in 2010, the legislature again amended the Special District Act to allow a district to enter "inactive" status by simply declaring the district to be inactive, until such time as it was convenient to do otherwise.[9] According to Colorado law, an inactive district means a district

[6] Local Government Information System, Colorado Division of Local Government
[7] "Police powers" in this sense are much broader than law enforcement, and include the power to regulate private behavior that affects the health, safety and welfare of the general public, to an extent that special-purpose governments do not. Local zoning ordinances are an example.
[8] 32-1-710, C.R.S.
[9] 32-1-104(3), C.R.S.

- in a predevelopment stage that has no residents other than those who lived within the district boundaries prior to the formation of the district
- that has no business or commercial ventures or facilities within its boundaries
- that has not issued any general obligation or revenue debt and does not have any financial obligations outstanding or contracts in effect that require performance by the district during the time the district is inactive
- that has not imposed a mill levy for tax collection in that fiscal year
- anticipates no receipt of revenue and has no planned expenditures, except for statutory compliance, in that fiscal year
- that has no operation or maintenance responsibility for any facilities
- that has initially filed a notice of inactive status pursuant to section 32-1-104 (3), and, each year thereafter, has filed a notice of continuing inactive status pursuant to section 32-1-104 (4).[10]

This inactive status allows the district to be exempt from many legal requirements - giving notice of their board election, having board meetings, adopting a budget, and compiling financial statements – the most basic requirements of accountability that apply to all other local governments, thus removing the district from the list of causes for which the state can dissolve it.

There are about 220 officially inactive metropolitan districts today, some of which have gone in and out of inactive status multiple times. (Since these districts have given notice that their inactivity is only temporary, they are included in the total number of 1520 active districts today.) This seems to be the latest example of the many successful efforts to reshape the laws governing special districts to accommodate the interests of development. By 2010 such measures had been gradually accumulating in the Special District Act for many years. To appreciate these changes, it is necessary to outline some basic organizational requirements of special districts.

FORMATION OF A METROPOLITAN DISTRICT

Even when a metropolitan district is actively complying with all the various legal requirements, some other basic modes of accountability in the law can be removed so that they do not apply to them. A number of legal provisions requiring accountability of all local governments can be modified by voters, and most metropolitan districts take full advantage of that ability during the process of forming the district. Also, special districts are the only form of government in the state whose residents do not have the power to recall board members or initiate ballot issues by petition. So, after people have moved into the district or purchased a business property, they do not have the power to revisit any of the election-approved obligations the district might have without being elected to, and gaining control of, the board. And sometimes that is impossible, as we shall see.

[10] 32-1-103(9.3), C.R.S.

But first, let's go back to the beginning of the formation of a metropolitan district. A developer might purchase a large undeveloped property, perhaps near a proposed airport, on the outskirts of a fast-growing city, or around a prospective highway interchange or light rail stop. A common practice is then to form a series of metropolitan districts to provide financing for the public improvements necessary to support development in a phased approach to development, either residential or commercial or both, one district at a time. The formation process requires two primary things: a "service plan" delineating the services to be provided by each district, and an election by qualified voters to approve each district's creation. Since metropolitan districts are "political subdivisions of the state" (i.e., a local government), the steps necessary are governed by law, and involve approval by the board of county commissioners (unless the proposed district is within a municipality, in which case the town board or city council takes their place), and action by a state district court.

The Service Plan

The service plan is essentially the district's charter, which outlines the services to be provided, their financing, and the geographic area in which they are to be provided. It sets the basic operating powers of, and limits on, the proposed district, and is submitted to the county board of commissioners for their review, or the governing body of a municipality if within a city or town's corporate limits.[11] There are very specific things the reviewing government must look for in the service plan, and other things they may require, for their approval.[12] If the service plan is approved by the reviewing government, the "qualified electors" of the proposed district petition district court for organization of the district. The court must judge only that the petitioners are indeed electors, and if so, orders an election to be held. If the election passes, the court orders the district to be organized as a separate independent unit of local government, and the service plan remains in effect until such time as it may be modified by the same process as when it was approved, a rare occurrence.

Therefore, the service plan is the first step in a district's organization. It is the basis on which the board of county commissioners (or city council) must judge the efficacy of the proposed district, and provides the standards by which the district will later operate. The law says the service plan must include a number of items, such as[13]

(a) ***A description of the proposed services.*** A metropolitan district must provide two or more of the following ten services: fire protection, mosquito control, parks & recreation, safety protection, sanitation, solid waste disposal, street improvements, television relay/translation, transportation and water.[14]

The various service plans of recently-organized metropolitan districts indicate that it is common for them to state that they will provide all of the ten services which

[11] 32-1-202, C.R.S.
[12] 32-1-203, C.R.S.
[13] The following provisions, in italics, can be found at 32-1-202(2), C.R.S.
[14] 32-1-103(10) and 32-1-1004(2), C.R.S.

metropolitan districts are legally able to provide, with some location-specific exceptions. For example, a district formed within the City and County of Denver would only provide fire protection services to the extent of dedicating land and building facilities for the Denver Fire Department to staff, so that service is somewhat limited; and Denver has its own solid waste disposal system, so that service would not be listed.

As noted above, a current approach in developing raw land is to organize a series of metropolitan districts at the same time, one of which is often the "management district," responsible for managing, implementing and coordinating the financing, construction, operation and maintenance of improvements in all the other districts. The other districts, which may represent phases of development, are considered to be "financing" districts only, organized for the sole purpose of borrowing money to finance public improvements. Commonly referred to as a "master/slave" relationship, this puts the management district in complete control of all actions within the entire service area of all the combined districts, and leaves the financing districts with relatively little to do other than issue debt and levy taxes to redeem that debt. A management district is typically the legal owner of critical infrastructure, such as water rights, and water and wastewater treatment plants.

A series of relatively new changes to the law have created powers for metropolitan districts that move them close to those of a municipality. Under a 2010 amendment, metropolitan districts that provide street improvements, safety or transportation services may levy a sales tax.[15] In 2009 the legislature gave metropolitan districts the power to create a special improvement district within their boundaries in the same fashion as municipalities, and the improvement district is often defined as a "component unit," or subsidiary, of the metropolitan district.[16] A metropolitan district may provide activities in support of business recruitment, management and development, pursuant to a 2007 amendment.[17] As of 2004, a metropolitan district may also provide covenant enforcement and design review services, which are usually the powers of a homeowners association (HOA), if it has entered into a contract with the HOA to do so, a step short of a municipality's ability to zone uses of land under the police power.[18]

(b) ***A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district.*** This usually includes provisions that allow the developer to loan money to the new district, to be repaid when bonds are issued.

[15] 32-1-1106, C.R.S. As of June 26, 2014 two metropolitan districts have taken advantage of this power, one in Jefferson County and one in Eagle County, according to the Colorado Department of Revenue Form DR1002 on Colorado Sales and Use Taxes.
[16] 32-1-1101.7, C.R.S. This statute gives all special districts organized under Title 32 of the statutes this power, including metropolitan districts.
[17] 32-1-1004(9), C.R.S., most recently amended by HB 16-1011 in 2016.
[18] 32-1-1004(8), C.R.S.

(c) ***A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district.*** Many metropolitan districts simply describe a general area in which services might be provided, and limit the boundaries of the initial district as minimal. One recently-organized set of six metropolitan districts, all proposed at the same time by the same petitioners, showed a map of the boundaries of each of the proposed districts as contiguous parcels measuring 20 feet by 20 feet, with an "inclusion area" of 684 acres, on which one or more of the metropolitan districts can expand. The plan said that districts numbered two through six, the financing districts, would include (i.e., annex) property as needed, and stated that the management district, number one, would not necessarily include any property other than the initial 400 square foot parcel, and would not ever contain any residential or commercial buildings. The reason for this will become obvious in the discussion of "The Election," below.

The law goes on to say that a county or municipality may disapprove the service plan if "evidence satisfactory to the board, at the discretion of the board, of any of the following is not presented":

(a) Adequate service will not be available to the area through the county, any municipality or existing special districts, within a reasonable time and on a comparable basis.
(b) The facility and service standards of the proposed special district are compatible with the facility and service standards of each county and nearby municipality.
(c) The proposal is in substantial compliance with a county master plan.
(d) The proposal is in compliance with any adopted county, regional, or state long-range water quality management plan for the area.
(e) The creation of the proposed special district will be in the best interests of the area proposed to be served.

We have not found any example of a district's service plan having been disapproved for any of these reasons, which is not to say that has not occurred.

A fairly recent phenomenon shows some metropolitan districts literally organize in the air. Developments that have commercial areas at ground level have been known to create a ground-level metropolitan district just for them, and create other ones above to serve residential units on upper floors, such as apartments and condominiums. Apparently this is done to equalize to some extent an aspect of our property tax system, commonly referred to as the Gallagher Amendment, which requires commercial property to be taxed based on 29% of their value, but residences at only 7.96 %. By creating "air" districts, a lower mill levy (i.e., tax rate) can be levied on the ground-level commercial properties than on the upper floor residences, so that the burden of paying for debt-financed public improvements can ostensibly be more equitable.

The Election

After determining that the petition to organize the district was properly submitted by eligible electors, the court orders an election to be held, asking if the district should be organized, and to elect members of the initial board to serve if the district is approved. An eligible voter in these elections has to be registered to vote in Colorado and either 1) a resident of the district, or 2) an owner, or spouse of an owner, of taxable property within the district.[19]

This is unusual, in that it is one of the rare provisions of Colorado's election laws that allow taxpayer status to be a qualification to vote in a local election. Presumably this was put in the original 1947 Act to accommodate owners of second homes, who wouldn't be able to register to vote in two places at the same time. In 1970, the General Assembly amended the law to allow registered voters to qualify to vote in these elections as an owner of taxable property if they are "obligated to pay general taxes under a contract to purchase real property within the district."[20]

This offered a new opportunity to developers of vacant land, who wanted to use a metropolitan district as a financing mechanism but had no eligible voters to vote in the election or serve on the board. Since most metropolitan districts are organized to improve undeveloped land, initially no one resides within the boundaries, so the only possible qualified voters are owners of taxable property. The board of a new district needs five members in order to be properly constituted, so at least five people have to qualify as owners of taxable property to vote and serve on the board. The property is usually owned by a corporation which cannot qualify as an elector, since a corporation has not yet been declared to be a "person" who can qualify to vote. With this 1970 amendment in place the property owner (the corporation) can enter into contracts with five people (usually relatives, partners or trusted employees) to sell them a parcel of the property, the contract for which obligates them to pay property taxes on the undeveloped property. The property is not ever actually sold, and the contract may be operable indefinitely, but it qualifies the five as "electors," as well as their spouses.

If the district includes residential property, as people buy or rent residences and register to vote they also become qualified as eligible electors, and can vote and serve on the board of the district they live in. However, they would only be in one of the financing districts, because, as the Service Plan said in the example above, the management district will have no residences. The only electors who qualify in the Management District would do so by virtue of their relationship to, and contract with, the corporate owner of the property, and the new homeowners would not have any say in some of the most basic governance decisions made on their behalf. This arrangement results in the developer retaining control over who can serve on the board of the "management" district, and virtually all the governance decisions affecting the other five districts in our example.

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[19] 32-1-103(5), C.R.S.

[20] Ch. 71, Colorado Session Laws 1970, p. 290, codified at 89-17-8, 1963 C.R.S, as amended; 32-1-103(5)(b), C.R.S. in current law.

Professionals who work in this area have said that some development company executives who have used this approach, have at the same time required the other four people to provide signed, undated releases from their contract. Then, if at some time in the future their relationship changes and the developer should no longer want them on the board, or perhaps they move out of state and no longer are registered to vote in Colorado, the developer can date the release and record it, thus disqualifying the person from continuing to be an elector and allowing a replacement to be appointed to the Board with a new contract. This approach would assure the developer of retaining absolute control over the Board and the management district indefinitely.

Other ballot questions are very often approved in these organizational elections, in addition to the basic question of organizing the district. They address such matters as

- Authorization of multiple debt issues, including ones which specify that developer advances are reimbursable general obligations of the district
- Exemption from TABOR tax and revenue limitations ("deBrucing") that authorize taxes to a maximum mill levy and grant authority to receive revenue from any source without limit
- Removal of term limits for board members
- Approval of intergovernmental agreements between the series of districts which delineate the responsibilities of the "management" district's control, relative to the "financing" districts

These election ballots often have as many as thirty ballot questions, and, since there are usually only five eligible electors, many are approved by a vote of 5-0, the five electors qualifying by virtue of their purchase contract with the land owner. Once all these ballot issues pass, contracts called "intergovernmental agreements" are executed that create legal obligations for all the financing districts to the management district.

State data indicates that metropolitan districts formed since January 1, 2001 have authorized debt collectively that totals nearly $2 trillion, including districts formed since January 1, 2010 which have approved $504.7 billion. State-level data do not show how many votes were cast in any of these elections, or how much of that debt has actually been issued since the election.[21]

WHY DO DEVELOPERS WANT TO HAVE THEIR OWN GOVERNMENT?

Many years ago, access to tax exempt debt and the power to condemn property (i.e., "eminent domain") were the major motivators for developers to create water and sanitation districts. Today, an added incentive is for developers to perpetuate control over the governance of the development, even after eligible voters who rely on their services have bought properties and moved in. Also, today existing municipalities in general are reluctant to extend services to new properties, especially residences which contribute little to the city's property tax base. This

[21] As of November, 2014

latter issue may be the primary reason for metropolitan districts' ascension to the preferred mechanism of issuing debt and providing services, since they can provide such an array of services without being the county's or the municipality's responsibility.

By maintaining control of the management district, in a development so organized, the development interests realize a number of advantages. First, the organizational election can approve a ballot question that recognizes monetary advances made by the developer to the new district as "general obligations" of the district. This makes these advances legal debts which must be repaid by the district when they issue bonds. Thus, the developer will be repaid for money spent on planning and legal expenses to set up the development, at an interest rate mutually agreed with the board of the district, which the developer controls by contract.

Reimbursement of the developers' expenses in starting up the district saves a good deal of money which would otherwise have to have been invested directly into the prospective development. In this way, the developers are reimbursed for some of the costs they have incurred to pursue the development. This may have the effect of keeping the cost of housing lower than it would otherwise be, by deferring its repayment, but also increases the profit margin of the developers and burdens the properties with more debt and interest expense.

If the management district retains ownership of all water, sewer and other infrastructure, it eliminates some potential barriers to the development plan, which could be a problem if a citizen board took over control of those decisions.

In a recent example, just before Thanksgiving 2014, a large developer in the south metro Denver area announced the launching of a large subdivision of 1250 homes, near one of their existing developments that is nearly built out. A reason cited in the press release for deciding to pursue this now was that the neighboring district had committed to provide water and sanitation services to the new homes, as though this was a recent serendipitous event. Upon closer scrutiny, it came to light that the neighboring district's board of directors was made up of five high-ranking employees of the same homebuilder for the new development.

ALTERNATIVES EXIST

When the Taxpayer's Bill of Rights[22] (TABOR) was added to the state constitution in 1991, there was some fear in legal circles that it would encourage the proliferation of independent special districts, since general-purpose local governments would be constrained by how much debt and spending they could manage.[23] The next year, the state legislature amended both the county and municipal "improvement district" statutes, which gave counties and municipalities more flexibility to use those mechanisms to serve the needs of planned development.[24] It is difficult to say whether the proliferation of independent districts after 1991

[22] Art. X, Sec. 20, Colo. Const.
[23] *"Use of the Nonprofit Supporting Foundation to Assist Governmental Districts After Amendment 1",* by Peter C. Guthery, Kerrie A. Boese and Lisa J. Lambert*;* *The Colorado Lawyer*, April 1993, pp. 685-693.
[24] Title 30, Article 20, Parts 4 and, and Title 31, Article 25, Parts 5 and 6, C.R.S.

was in any way caused by TABOR, but the fact is that many times more metropolitan districts have been organized than municipal or county improvement districts. This may simply be due to the reluctance of the general purpose governments to take on the responsibilities of improvement district management. Land developers appear to prefer having the independence as well, so both parties are motivated to pursue the metropolitan district option.

Although general purpose governments may be hesitant to create improvement districts – which are essentially component units of, and dependent upon, the county or municipality - for the public infrastructure and services necessary to accommodate new development, there is nothing to prevent only one metropolitan district to be formed to service the entire service area, the whole 684 acres in the example outlined in item c) on page 6, above. Then, the metropolitan district could create its own five improvement districts, under the 2009 statute created specifically for this purpose, all of which would be under one Board.[25] This would prevent the need for invoking the fictional (but legal) definition of qualified elector as a "property owner" who has a contract to purchase property, but never actually purchases it. This, however, would in turn, prevent the development company from retaining complete control over the development for as long as they see fit. Such an approach would contribute to citizens of special districts being empowered to control more of the aspects of their community's policy-making process, and perhaps encourage a measure of increased respect for this small part of Colorado's system of governance

Clearly, creative amendments to Colorado's laws have led to novel approaches for not only minimizing risk to developers and maximizing their return on investment, but also keeping control of future government decisions affecting their operations. Future residents and property owners cannot become obstacles while development plans are implemented, by allowing the development company to maintain control of the governments undertaking the plan. In some cases, the actual development plans may not be altogether clear in advance of a district's approval, such as in the 400 square foot districts 2 through 5 in our example above which make it difficult for a prospective property owner to evaluate exactly what the plan is. County and municipal governing boards, as well as district courts, have allowed this practice, which appears to only benefit development interests, potentially at the expense of the ultimate consumer, whether a resident or business owner. This "publicazation" of private, for profit purposes goes significantly beyond the original stated intent of the 1947 Metropolitan District Act: securing for the districts residents certain urban services which would otherwise not be available. There are other alternatives, as we can see by looking at other states.

What Some Other States Do

Being a high-growth state, Colorado is under some pressure to provide a path that developers can use to cheaply and effectively develop raw land to accommodate an increasing population. To date, that path has been rather circuitous, relying on clever legal angles to take

[25] 32-1-1101.7, CRS

advantage of often unclear, and sometimes in the absence of, statutory provisions. We may be able to look to some of our sister high growth states for examples of alternative approaches.

Colorado ranked 8th of all 50 states in total population increase for the period 2010 to 2015, but the other seven states with greater growth all began the period with a higher total population, making Colorado's population growth remarkable. In percentage terms, Colorado ranked 2nd of all these eight states in rate of increased population, slightly behind Texas.[26] Texas also experienced the highest absolute number of population growth of all states during that time. Therefore, Texas seems a reasonable candidate to begin examination of alternative practices.

Texas

The Texas Constitution has provided for special districts since 1904, but an amendment in 1971 authorized the creation of Municipal Utility Districts (MUDs), which have become the primary tool for new development in the state. Texas municipal governments enjoy an area of extraterritorial jurisdiction within which they have certain influence, from one-half to five miles, depending upon the size of the municipality.[27] It is within this unincorporated ring that municipalities have the ability to consent to the creation of a MUD for the development of vacant land, and it is there that most of the special districts in Texas have been created.

A MUD is an independent unit of local government with a board of five directors, the qualifications of which are to "be at least 18 years old, a resident citizen of the State of Texas, and either own land subject to taxation in the district or be a qualified voter within the district."[28]

In forming a new MUD, the city may require the proposed MUD to submit all infrastructure plans for approval, and limit the length of maturity and interest rate of the MUD bonds. The city then has the legal option to annex the MUD, acquire all the assets and assume the debt, under specific procedural steps.[29]

MUDs can provide water, sewer and drainage services, and construct parks, street lighting, fire protection facilities and certain types of roads. They can borrow money by means of municipal bonds, and use their taxing power to levy property taxes to pay for the principal and interest on them, as well as collect user fees for the expenses of operating a water and or sewer system.

The Texas Commission on Environmental Quality has strict financial feasibility rules which a MUD must follow before a MUD can issue any debt: a) the completion of all water, sewer and drainage facilities to be financed, b) completion of all streets and roads that provide access to the areas served, c) the completion of at least 25% of the improvements (i.e., houses, businesses, etc.) in the financial projections, and d) demonstrate that the projected buildout will

[26] See Attachment 2
[27] Texas Local Government Code, Section 42.021
[28] Texas Water Code Ann., Section 54.102
[29] This overview is taken primarily from "Texas Municipal Utility Districts: An Infrastructure Financing System" by Allen Boone Humphries Robinson, LLP; doc.#154186-2; Houston, TX.

support debt service payment with a reasonable mill levy rate and service fee structure. All MUD bonds must be approved by the Texas Office of the Attorney General.

Once organized, a MUD's powers and functions are supervised by the state through the Texas Natural Resource Conservation Commission.[30]

The developer can recover infrastructure costs from a subsequent bond issue, as soon as the conditions above are met, then can use that reimbursement to build out the next phase, and so on until the development is complete.

California

California saw the second highest absolute population growth during the period 2010-2015, behind Texas. California has set up a system allowing the organization of Community Facility Districts (CFDs), often referred to as Mello-Roos districts (after the legislation's sponsors), designed for use by developers.

The Mello-Roos Community Facilities Act was enacted in 1983, five years after California's Proposition 13 was enacted. Prop 13, as it's referred to, limited increases in the tax on any given property, among other things,[31] and made it difficult for planned development to pay for itself through property taxes, widely considered the most conventional method. Community facilities districts (CFDs) are statutorily authorized to levy a "parcel tax," defined as a flat-amount property tax levied on each parcel of property without regard to any improvements thereon or the value of the taxable property; it is therefore not an *ad valorem* property tax (and would be similar to Colorado's system of fee "assessments," by means of which many of our state's improvement districts operate). The parcel tax is used to redeem bonds issued for the facilities needed in the district, pay directly for the facilities themselves, pay for services, or any combination thereof.

CFDs are created by a general-purpose local government (i.e., a city or a county), whose governing body (city council or county Board of Supervisors) act *ex officio* as the board of the district. Once created, a CFD is a "dependent" unit of government, similar to a county or municipal improvement district in Colorado. The city or county approves the bond issue to pay for needed improvements, the parcel tax to be levied to service the debt, and the improvements themselves. A ~~rather~~ careful process is required of a city or county prior to considering a district's organization, which includes assembling teams of internal and external experts to analyze the proposed development, and development of a Joint Powers Agreement between the general purpose "parent" government and surrounding other agencies which may be affected. Developers who advance money for needed improvement and other expenses can be reimbursed out of the proceeds of a bond issue, when bonds are sold.

[30] Texas Water Code Ann., Section 54.024
[31] "What is Prop 13?," California Tax Data, Irvine, CA, undated at http://www.californiataxdata.com/pdf/Prop13.pdf

California requires a vote to approve a bond issue or property tax increase, a 2/3 majority of which is also required by Prop 13. The CFD statute sets up a unique system to accomplish this. "Qualified electors" in such a CFD election are the registered voters of the area,[32] unless there are less than 12 electors within the boundaries of the proposed district. In that case, the "qualified electors" are the owners of the land within the district, with each owner entitled to one vote per acre (or portion) owned.[33] These "landowner vote" districts are designed specifically to mitigate the impacts of new development, and California law places restrictions on both the type and level of services, as well as the level of facilities, that may be authorized by a landowner vote. As a practical matter, their use is only applicable in the initial stage of development.

After CFD debt is issued, annual reporting to the California Debt and Investment Advisory Commission of basic financial information about the bond issue is required. In state Fiscal Year 2013-14, there were 919 active Mello-Roos districts in California.[34]

Florida

After Texas and California, Florida realized the third highest population increase of all states, as well as the third highest percentage rate of increase (behind Texas and Colorado), from 2010-2015.[35]

Florida's Community Development Districts (CDDs) are more like Colorado's metropolitan districts, but with some notable differences. Their enabling statute was passed in 1980, but they proliferated after the 1985 Florida Growth Management Act required that the capital improvements needed to support development must be available concurrent with the impacts of that development.[36] Since that time, CDDs have only been initiated by developers in areas with no residents.

CDDs are independent of any general-purpose local government, and governed by a board elected by landowners on the basis of one vote per acre owned. After the sixth year, the landowner Board members are gradually replaced by registered electors from within the district, if the population of the district has reached 250 voters (or 500 voters after ten years).[37] Board elections are held every two years, on a date determined by the board of the district. Developers

[32] Except when the special tax will not be levied on residential property
[33] An Introduction to California Mello-Roos Community Facilities Districts, Bort, Daniel C., Orrick, Herrington and Sutcliff, LLC, 2006, San Francisco, CA.
[34] Reports were filed for 1,407 bond issues; California Mello-Roos Community Facilities Districts Yearly Fiscal Status Reports - 2013–2014, California Debt and Investment Advisory Commission, CDIAC Publication No. 16-03, p. 2.
[35] Other states in the top eight during this period also have similar structures to accommodate development: Arizona (#6) and Washington (#5) have their own types of community facilities districts with some similarities to the states addressed here. Georgia (#4) allows a structure called county improvement districts, which has some similarities, and are not unlike Colorado county improvement districts.
[36] 2014 Florida County Government Guide, Florida Association of Counties, p. 120
[37] Fla.Stat §190.006(3)(a)2.b.

have to disclose to purchasers of property the existence of the district and its power to issue debt and impose taxes and assessments.[38] There are 607 CDDs in Florida.[39]

CONCLUSION

Colorado's current metropolitan district framework results in advantages and disadvantages for those involved. For developers it provides financial certainty in developing new communities to accommodate Colorado's growing population. Because developers can recover their investments in land and infrastructure more quickly, those costs do not need to be built into the sales prices offered to home and business purchasers, so home prices may be lower. On the other hand, however, property owners are often deprived of access to the governmental entity controlling their taxes, are not able to hold them accountable through recall, and are unable to receive the protections that the laws and procedures applicable to other state and local governments afford, such as running for office in a "management district," term limits for board members, the power of citizen initiative, and the tax limits contained in TABOR. Simply stated, often property owners in metropolitan districts have but one option, and that is to live with whatever the management district board, installed and controlled by the developer, decides. This seems to deviate from the form of representative government most citizens have grown to expect.

California's approach appears to offer the most straightforward alternative for further consideration. It preserves the system of general-purpose public sector organizations and their policies to be dominant in the public sphere, and accommodates development interests while limiting their access to public institutions to only the most important aspect of their needs. The Joint Powers Agreement also fosters better inter-local cooperation on approval of developments, which can sometimes be contentious.

In this model, developers can use the CFD structure to make use of federally-subsidized public debt, get their investments reimbursed, and keep the cost of improvements low for the (eventual) property owner. At the same time, general-purpose local governments take responsibility for the oversight of the district, and citizens who move into the development can exercise their rights to access the district in a democratic process, through the general-purpose government. The district is essentially dissolved when the debt liability is satisfied, and the private use of the CFD is only to accomplish the financing of improvements, not to control the operation in perpetuity or for some arbitrary length of time.

California is also governed by property tax restriction somewhat similar to Colorado's, and "landowner vote" elections are restricted to the organizational process. The robust planning process required before a CFD is created takes every precaution to avoid problems in the resulting development.

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[38] "Special Districts as Institutional Choices for Service Delivery: Views of Public Officials on the Performance of Community Development Districts in Florida"; Scutelnicu, Gina; Public Administration Quarterly Fall 2014.
[39] List from the Florida Department of Economic Opportunity, March 26, 2016

Whether or not California provides a viable alternative to balance the needs of developers as well as providing citizens both control and accountability over the improvements that their taxes must finance, we believe policymakers in Colorado should begin the process of examining options to improve our current metropolitan district laws and practices. Piecemeal patches to our existing laws and the way they are implemented are not likely to be effective and may foster unintended consequences. We are convinced that it is time for a wholesale revision to be carefully considered.

Attachment 1. Types of Local Governments

Active Colorado Local Governments by Type

Code	Entity Type	Statute	Count
1	Counties	30-1-101	62
2	Home Rule Municipalities	31-1-202 & Constitution Art. XX	97
3	Territorial Charter Municipalities	Territorial Charter & Constitution Art. XIV, Sec.13	1
4	Statutory Cities	31-1-203	12
5	Statutory Towns	31-1-203	160
6	Metropolitan Districts	32-1-103	1520
7	Park & Recreation Districts	32-1-103	56
8	Fire Protection Districts	32-1-103	255
9	Health Service Districts (Hospital)	32-1-103	38
10	Sanitation Districts	32-1-103	70
11	Water Districts	32-1-103	77
12	Water & Sanitation Districts	32-1-103	123
13	County Recreation Districts	30-20-701	8
14	Metropolitan Sewage Disposal Districts	32-4-501	2
15	Cemetery Districts	30-20-801	81
16	Library Districts	24-90-103	56
17	Ground Water Management Districts	37-90-118	13
18	Water Conservancy Districts	37-45-101	52
19	County Pest Control Districts	35-5-101	17
20	Conservation Districts (Soil)	35-70-101	76
21	Metropolitan Water Districts	32-4-401	0
22	Irrigation Districts (Irrigation Drainage)	37-41-101 to 37-44-149	16
23	Junior College Districts	23-71-101	4
24	Law Enforcement Authorities	30-11-401	7
25	Drainage Districts	37-20-101	13
26	Downtown Development Authorities	31-25-801	16
27	Urban Renewal Authorities	31-25-101	59
28	General Improvement Districts (Municipal)	31-25-601	56
29	Special Improvement Districts (Municipal, Incl. Storm Sewer)	31-25-501	45
30	Local Improvement Districts (County)	30-20-601	62
31	Public Improvement Districts (County)	30-20-501	82
32	County Housing Authorities	29-4-502	27
33	County Disposal Districts	30-20-201	1
34	Power Authorities	29-1-204	2
35	Water Authorities	29-1-204.2	30
36	Moffat Tunnel Authority	32-8-101	1
37	Regional Transportation District	32-9-101	1
38	Colorado Travel And Tourism Authority	29-24-101 (repealed 8/1/2000)	0
39	Urban Drainage & Flood Control District	32-11-101	2
40	Internal Improvement Districts (Flood Control)	37-44-101	0
41	Airport Authorities	41-3-101	4
42	Tunnel Districts	32-1-103	0
43	Conservancy Districts (Flood Control)	37-1-101 to 37-8-101	4
44	Grand Valley Drainage District	37-31-104	1
45	Ambulance Districts	32-1-103	9
46	Housing Authorities (Municipal)	29-4-204	81

Active Colorado Local Governments by Type

Code	Entity Type	Statute	Count
47	Authorities (Intergovernmental Contract)	29-1-201 to 203	42
48	Rail Districts	32-12-101	0
49	Recreation Facility Districts	29-7-101	2
50	County Water & Sanitation Facilities	30-20-401	0
51	Conservation Districts (River Water)	37-46-101 to 37-50-142	4
52	Denver Metropolitan Scientific & Cultural Facilities District	32-13-104	1
53	Scientific & Cultural Facilities Districts	32-13-108	0
54	Mine Drainage Districts	34-51-101	0
55	Public Highway Authorities	43-4-501	3
56	Cherry Creek Basin Water Quality Authority	25-8.5-101	1
57	Business Improvement Districts	31-25-1201	50
58	Regional Service Authorities	32-7-101 & Constitution Art. XIV, Sec. 17	1
59	Special Taxing Districts of Home Rule County	30-35-901 & Home Rule Charter	1
60	Emergency Telephone Service (911 Authorities)	29-11-101	31
61	City & County Of Denver	30-11-101 & Constitution Art. XX, Sec. 4	1
62	University Of Colorado Hospital Authority	23-21-503	1
63	Denver Metropolitan Major League Baseball Stadium District	32-14-104	1
64	Regional Transportation Authorities	43-4-601	5
65	Pueblo Depot Activity Development Authority	29-23-104	1
66	Colorado Intermountain Fixed Guideway Authority	32-16-104 (repealed 1/1/2004)	0
67	Metropolitan Football Stadium District	32-15-104	1
68	Denver Health And Hospital Authority	25-29-103	1
69	Multijurisdictional Housing Authorities	29-1-204.5	6
70	City & County Of Broomfield	Constitution Art. XX, Sec. 10-13	1
71	Local Marketing Districts	29-25-101	5
72	Special Taxing Districts of Home Rule Municipality	Home Rule Charter (not from CRS, incl. 31-25-501, 31-25-601)	11
73	Health Assurance Districts	32-1-1003.5	0
74	Mental Health Care Service Districts	32-17-101	0
75	Forest Improvement Districts	32-18-101	0
76	Fountain Creek Watershed, Flood Control, and Greenway District	32-11.5-201	1
77	Colorado New Energy Improvement District	32-20-104	1
78	Federal Mineral Lease Districts	30-20-1304	5
79	Subdistrict of Special District	Title 32, Article 1, Section 1101(1)(f)	2
80	Special Improvement Districts (Title 32 Special District)	32-1-1101.7	0
95	Boards of Cooperative (Educational) Services (BOCES)	22-5-104	20
96	Tax Increment Finance (TIF) URA/DDA Plan Areas	31-25-107 & 31-25-807	0
99	School Districts	22-30-103 & Constitution Art.IX, Sec. 15	178

Total Active Local Governments: 3,676

Total Active Title 32 Districts: 2,160

Total Active Title 32, Article 1 Districts: 2,148

Attachment 2. Top Ten States in Population Increase 2010-2015[40]

Geography	April 1, 2010		Population Estimate (as of July 1)						2010 - 2015 % chg	2010-2015 POP GROWTH
	Census	Estimates Base	2010	2011	2012	2013	2014	2015		
United States	308,745,538	308,758,105	309,346,863	311,718,857	314,102,623	316,427,395	318,907,401	321,418,820	3.90%	12,071,957.00
Texas	25,145,561	25,146,105	25,244,363	25,654,464	26,089,741	26,500,674	26,979,078	27,469,114	8.81%	2,224,751.00
California	37,253,956	37,254,503	37,334,079	37,700,034	38,056,055	38,414,128	38,792,291	39,144,818	4.85%	1,810,739.00
Florida	18,801,310	18,804,623	18,849,890	19,105,533	19,352,021	19,594,467	19,905,569	20,271,272	7.54%	1,421,382.00
Georgia	9,687,653	9,688,681	9,713,454	9,812,280	9,917,639	9,991,562	10,097,132	10,214,860	5.16%	501,406.00
North Carolina	9,535,483	9,535,692	9,558,979	9,651,025	9,747,021	9,845,432	9,940,387	10,042,802	5.06%	483,823.00
Washington	6,724,540	6,724,543	6,743,060	6,823,229	6,897,292	6,973,281	7,063,166	7,170,351	6.34%	427,291.00
Arizona	6,392,017	6,392,307	6,408,208	6,468,732	6,553,262	6,630,799	6,728,783	6,828,065	6.55%	419,857.00
Colorado	5,029,196	5,029,324	5,048,254	5,119,480	5,191,731	5,271,132	5,355,588	5,456,574	8.09%	408,320.00
New York	19,378,102	19,378,087	19,402,920	19,523,202	19,606,981	19,691,032	19,748,858	19,795,791	2.02%	392,871.00
Virginia	8,001,024	8,001,045	8,025,787	8,110,783	8,193,374	8,267,875	8,328,098	8,382,993	4.45%	357,206.00

[40] PEPANNRES: Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2015, US Bureau of Census