

Outline of Senate Bill 21 - 262 with Analyses

Section 1 - Notices for Metro District Elections

This section says pick two of the following 5 ways to tell residents there is an election coming up.

Problem:

1. The obvious way of communicating is left out - email. Virtually all Metro District management companies rely on email to tell residents what THEY really want residents to know.

Solution:

1. Require email to residents as a MANDATORY way to send the notice with second choice as regular mail. Eliminate the others.

Problem:

2. The new "rule" has a loophole - doesn't apply to district with fewer than 1000 electors. That is most districts because they create multiple districts which all have less than 1000 electors. They eliminate the new rule with this HUGE exception.

Solution:

2. Eliminate this exception (1.5 (e))

Problem:

3. There is no reference to the content of the notice.

Solution:

3. There should be additional provisions in the bill which require information to be contained in the notice.

For example, the notice should say

a. what the financial audits say - that the directors are family, employees or affiliated with the developer and have a conflict of interest with the residents

b. What the ballots say - that the developer "voted" to eliminate the residents right to vote on bond debt for at least 20 years and that the board of directors has the sole power to issue debt

c. Include a self-nomination form that the resident can fill in and send back to be placed on the election ballot

Section 2 Bill Doesn't Apply to "Inactive Districts"

Problem:

1. In active Districts still operate and should make all the same disclosures

Solution:

1. Eliminate Section 2

Section 3 Requires Creation of Official Website and Requires Certain Information

Problem:

1. The bill gives districts one year to create the website. Most districts already have one. Problem is the content. In many cases its just propaganda for how wonderful metro districts are.

Solution:

1. Limit time to 90 days.

Problem:

2. Information required - names and contact information for directors. It does not say whether or not they are residents or developers.

Solution:

2. Require a statement that is expressly provided in the financial audit that the directors are

family, employees or affiliated with the developer and that they have a conflict of interest with the residents.

Problem:

3. The documents are limited to the current budget, the prior year audit, the annual report, the current year election results, the notice of election 75 days prior to the election, a map of the district boundaries, notice of meetings, any other information deemed appropriate by the board of directors. There are significant disclosures that are missing.

Solution:

3. a. Include the initial election results with the full ballot showing the actual amount of the debt limit and finance limit for the district and the "vote" to eliminate the right of residents to vote on bond debt for at least 20 years and assign that power to the board of directors.
 - b. Include all budgets and audits.
 - c. Include all the DOLA reports showing the debt issued and remaining.
 - d. Include a statement that the directors are affiliated with the developer and have a conflict of interest with the residents (as stated in the audits), that the board has the exclusive power to vote on issuing bond debt, that the residents have the right to vote and serve on the board as soon as they purchase property in the district and provide a link to a self-nomination form
 - e. Include all the Intergovernmental Agreements and any other agreements of any kind entered into on behalf of the district. Of particular concern are the single party agreements signed by the developer on behalf of the developer and the developer on behalf of the residents obligating the residents to pay money to the developer and developer controlled districts.
 - f. Include all Service Plans
 - g. Include the "truth in lending" disclosure report referenced in Section 7 (as revised with meaningful disclosures). In particular, the total debt, the total amount of planned debt, the per household payment for the debt, and the amount of "developer debt" paid with taxes compared to the amount paid for all public services such as fire, school, city, county services with taxes.

Problem:

4. The contents of the website are left to the board of directors who are all affiliated with the developer for the "formative stages" of the community. They have a conflict of interest with the residents.

Solution:

4. The City or County creating the district should have final authority over the content of the website and it should be a requirement expressly contained in the Service Plan.

Section 4 Annual Report

Problem:

1. Timing of the Annual Report is confusing.

Solution:

1. Clearly state that the city or county creating the district may, at any time, and not less than once every year, require submission of a report.

Problem:

2. The content of the report is too limited.

Solution:

2. The report shall include at a minimum the following material. The city or county creating the district may at any time require additional information of any kind included in the report.

Problem:

3. Missing content.

Solution:

3. The report shall include all the current information contained in the Section 7 disclosure (as revised) In particular, the total debt, the total amount of planned debt, the per

household payment for the debt, the amount of "developer debt" paid with taxes compared to the amount paid for all public services such as fire, school, city, county services with taxes, and the ratio of debt to assessed value.

Problem:

4. The bill references "consolidated service plan". There is no provision in current law for a "consolidated service plan". One of the abuses is creating multiple districts for the same community and having one district, too small to build on, as the "controlling" district wholly owned and controlled by the developer. Through this unauthorized multi-district creations, districts routinely suppress resident vote on financial issues. There should only be one district for each community/development.

Solution:

4. Eliminate 32-1-207 (III)

Problem:

5. Another unwarranted exception for inactive districts. They still operate.

Solution:

5. Eliminate 32-1-207 (III).

Section 5 Allows Single Party Agreements Signed by the Developer on Behalf of the Developer and on Behalf of the Residents Allows these to be "approved" with a certification by the Developer's Engineer.

Problem:

1. These agreements are not enforceable. The developer signs the agreement on behalf of the developer. The developer also signs the same agreement on behalf of the residents. He has a conflict of interest. There is no contract and it is against public policy to have a party with a conflict of interest representing the other party at the same time. These agreements should be expressly prohibited.

Solution:

1. Amend Section 5 to expressly PROHIBIT AND DECLARE UNLAWFUL WITH APPROPRIATE CIVIL OR CRIMINAL SANCTIONS any agreement that provides a financial obligation upon

future residents. No such agreements should be permitted until the board is 100% controlled by residents who are unaffiliated with the developer.

Problem:

2. The developers routinely use their own engineers or engineers who are part of the developer influenced industry. These professional engineers have the same conflict of interest.

Solution:

2. No contracts or agreements which provide for financial obligations upon future residents may be authorized until the board is 100% residents with no affiliation with the developer and are "certified" by financial staff of the city or county that created the district or certified by a professional engineer accountable solely to the city or county.

Problem:

3. There is an exception for "public improvements". These still create a financial burden on the future residents.

Solution:

3. Eliminate 32-1-1001 (d) (IV)

Section 6 Eminent Domain

This has little or no impact on the citizens and was requested by the cities and counties.

Section 7 The Truth in Lending Disclosure for Residents

Problem:

1. The timing. The bill does not state when the disclosure should be made.

Solution:

1. The disclosure should be made at every contact point with the homebuyer. In the sales office. At the time of initial contract. At the time of disclosures. At the time of closing.

Problem:

2. Who is obligated to communicate the disclosure. The city/county creating the district, developer, the builder, the real estate agents all have a role to play.

Solution:

2. Require that the city/county create a website link for districts within their boundary and require that the disclosure be posted on that website. Require that the developer and builder post the disclosure in their offices at the construction site and on all materials provided to prospective homebuyers. Require that the real estate agents obtain written acknowledgement that the client has received and read the disclosure at the time of showing.

Problem:

3. Limiting to new construction. This is not designed to inform residents of the risks of moving into a metro district.

Solution:

3. Require the disclosure for all sales of all homes in all special districts (metro districts).

Problem:

4. It creates a requirement for unnecessary information which is also stated in a convoluted way. The result is less transparency and more confusion.

Solution:

4. Reduce the information required to the necessary "truth in lending" information which can be presented in less than one page with links to a handful of documents

Problem:

5. Missing Critical Content

Solution:

5. Add

- a. The home you are potentially buying is in a metro district. The taxes in metro districts are typically higher than taxes in non-metro districts.
- b. You have the right to vote and serve on the Board of Directors for the District. Contact the District Manager, Designated Election Official or Attorney for the District to obtain a self-nomination form to get on the ballot.
- c. Until the residents obtain positions on the Board of Directors, the Directors are family, employees or business associates of the developer and have a conflict of interest with the residents which is expressly disclosed in the District's Financial Audit each year.
- d. Typically the developer "votes" to pass ballot issues before the residents arrive which deprive the residents of the right to vote on issuing bond debt for up to 20 years. Residents are advised to obtain seats on the Board of Directors as soon as possible in order establish the residents' right to vote on whether or not to issue bond debt. Bond debt is paid by the property taxes.
- e. In many instances you have already paid for the infrastructure costs when you paid for your home or developed lot. Residents should get on the board as soon as possible to prevent over billing for the same expense.

All the critical financial information is available in documents already created by the developer in the course of applying for a metropolitan district. It should not take a team of lawyers and accountants to dig it all out. It can easily be presented on one page with links to the documents.

e. Here is a list of the critical financial information. A sample disclosure form follows.

- 1.) total amount of authorized resident debt voted on in the initial ballot,
- 2.) total amount of outstanding debt that has actually been issued,
- 3.) the length of time for the debt,
- 4.) anticipated schedule for future debt,
- 5.) the current total community payment for the debt,
- 6.) average annual payment for each resident
- 7.) the interest rate for all the loans and debt
- 8.) current mill rate for all district debt and operations/maintenance

- 9.) current mill rate for all other property tax expenses (city/county, school, fire property taxes)
- 10.) current amount of all property taxes
- 11.) percentage of all property taxes paid for district debt and operations/maintenance compared with total property tax bill
- 12.) the assessed valuation of the district property
- 13.) the total debt
- 14.) The ration of debt to valuation (DOLA stated in 2006 that a ratio higher than 20% raised concerns about the financial health of the district)

Proposed One Page Disclosure Form follows:

Important Financial Disclosure Regarding Metro Districts

The home you are potentially buying is in a metro district. The taxes in metro districts are typically higher than taxes in non-metro districts.

You have the right to vote and serve on the Board of Directors for the District. Contact the District Manager, Designated Election Official or Attorney for the District to obtain a self-nomination form to get on the ballot.

Until the residents obtain positions on the Board of Directors, the Directors are family, employees or business associates of the developer and have a conflict of interest with the residents which is expressly disclosed in the District's Financial Audit each year.

Typically the developer "votes" to pass ballot issues before the residents arrive which deprive the residents of the right to vote on issuing bond debt for up to 20 years. Residents are advised to obtain seats on the Board of Directors as soon as possible in order establish the residents' right to vote on whether or not to issue bond debt. Bond debt is paid by the property taxes.

In many instances you have already paid for the infrastructure costs when you paid for your home or developed lot. Residents should get on the board as soon as possible to prevent over billing for the same expense.

- 1. The total amount of the resident debt limit for this district is _____. (Ballot Issue)
- 2. The total amount of the resident debt finance limit is _____. (Ballot Issue)
- 3. The debt limit allowed in the latest Service Plan is:_____. (Service Plan)

4. The total amount of debt issued is: _____. (DOLA disclosure)
5. The total current length of time that residents will be required to pay taxes to pay down the current debt is _____. (Service Plan; Bond)
6. The anticipated schedule for future debt is: _____ (Financial Plan in Service Plan)
7. The current annual payment by the entire community for debt is: _____. (Bond; Budget)
8. The average annual payment for each resident for the debt is: _____. (Bond; Budget; Financial Plan)
9. The maximum interest on any debt is _____. (Service Plan; Ballot Issue)
10. The mill rate for all the district debt and operations and maintenance are: _____. (Budget)
11. The current mill rate for all the property taxes other than district debt and operations and maintenance (city, school, fire, etc) are: _____. (County; DOLA; MLS)
12. The current amount of all property taxes is: _____. (County; DOLA; MLS)
13. The ratio district debt plus operations/maintenance to all property tax debt is: _____.
14. The assessed valuation of the district property is: _____. (Budget; Financial Audit; DOLA)
15. The total district debt is: _____. (Budget; Financial Audit; DOLA)
16. The ratio of debt to assessed valuation is: _____. (The Colorado Department of Local Affairs states that a ratio higher than 20% raises concerns about financial health of the district).

