

CHAPTER 237

GOVERNMENT - SPECIAL DISTRICTS

SENATE BILL 94-053

BY SENATORS L. Powers and Feeley;
also REPRESENTATIVE Owen.

AN ACT

CONCERNING THE EXCLUSION OF REAL PROPERTY FROM A FIRE PROTECTION DISTRICT THAT IS TO BE INCLUDED IN ANOTHER FIRE DISTRICT.

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

SECTION 1. 32-1-501 (2), the introductory portion to 32-1-501 (3), and 32-1-501 (3) (a) (I), (3) (a) (II), (3) (b), (3) (c), (3) (d), (3) (f), (4), (5) (a), (5) (b), and (5) (c) (II), Colorado Revised Statutes, as amended, are amended, and the said 32-1-501 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

32-1-501. Exclusion of property by fee owners or board - procedure.
(1.5) (a) IN ADDITION TO THE PROCEDURE SPECIFIED IN SUBSECTION (1) OF THIS SECTION, THE BOARD, THROUGH ADOPTION OF A RESOLUTION, MAY ALTER THE BOUNDARIES OF A FIRE PROTECTION DISTRICT THROUGH THE EXCLUSION OF REAL PROPERTY FROM THE DISTRICT IF THE PROPERTY TO BE EXCLUDED WILL BE PROVIDED WITH THE SAME SERVICE BY ANOTHER FIRE PROTECTION DISTRICT OR BY A COUNTY FIRE IMPROVEMENT DISTRICT AND THE BOARD OR GOVERNING BODY OF THAT DISTRICT HAS AGREED BY RESOLUTION TO INCLUDE THE PROPERTY INTO THE DISTRICT IMMEDIATELY AFTER THE EFFECTIVE DATE OF THE EXCLUSION ORDER.

(b) (I) NOT MORE THAN FORTY-FIVE DAYS NOR LESS THAN THIRTY DAYS PRIOR TO A MEETING OF THE BOARD TO CONSIDER FINAL ADOPTION OF A RESOLUTION PROPOSING PROPERTY TO BE EXCLUDED, THE SECRETARY OF THE FIRE PROTECTION DISTRICT SHALL SEND LETTER NOTIFICATION TO THE FEE OWNER OR OWNERS OF ONE HUNDRED PERCENT OF ALL PROPOSED REAL PROPERTY TO BE EXCLUDED FROM THE DISTRICT AS LISTED ON THE RECORDS OF THE COUNTY ASSESSOR ON THE DATE REQUESTED.

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

(II) THE LETTER NOTIFICATION SHALL INDICATE THAT IT IS A NOTICE OF A MEETING REQUIRED TO BE HELD PURSUANT TO SUBSECTION (2) OF THIS SECTION CONCERNING THE EXCLUSION OF THE PROPERTY FROM THE DISTRICT, SHALL INDICATE THE DATE, TIME, AND LOCATION OF THE MEETING, AND SHALL CONTAIN BOTH A REFERENCE TO THE FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT PROPOSED FOR INCLUSION AND THE CURRENT MILL LEVY OF THE DISTRICT, IF ANY.

(III) THE MAILING OF THE LETTER NOTIFICATION TO ALL ADDRESSES OR POST OFFICE BOX ADDRESSES WITHIN THE AREA PROPOSED TO BE EXCLUDED FROM THE DISTRICT SHALL CONSTITUTE A GOOD-FAITH EFFORT TO COMPLY WITH THIS SECTION AND FAILURE TO SO NOTIFY ALL FEE OWNERS SHALL NOT PROVIDE GROUNDS FOR A CHALLENGE TO THE MEETING BEING HELD.

(2) The board shall hear the petition OR RESOLUTION at a public meeting after publication of notice of the filing of ~~such~~ THE petition OR PRELIMINARY ADOPTION OF THE RESOLUTION, the place, time, and date of ~~such~~ THE meeting, the names and addresses of the petitioners, IF APPLICABLE, A GENERAL DESCRIPTION OF THE AREA PROPOSED FOR EXCLUSION, and notice that all persons interested shall appear at ~~such~~ THE DESIGNATED time and place and show cause in writing why the petition should not be granted OR THE RESOLUTION SHOULD NOT BE FINALLY ADOPTED. The board may continue ~~such~~ THE hearing to a subsequent meeting. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing special district to file a written objection shall be taken as an assent on his OR HER part to the exclusion of the area described in the notice.

(3) The board shall take into consideration and make a finding regarding all of the following factors when determining whether to grant or deny the petition OR TO FINALLY ADOPT THE RESOLUTION or any portion thereof:

(a) The best interests of all of the following:

(I) The property ~~seeking exclusion~~ TO BE EXCLUDED;

(II) The special district from which the exclusion is ~~sought~~ PROPOSED;

(b) The relative cost and benefit to the property ~~seeking exclusion of~~ TO BE EXCLUDED FROM the provision of the special district's services;

(c) The ability of the special district to provide economical and sufficient service to both the property ~~seeking exclusion~~ TO BE EXCLUDED and all of the properties within the special district's boundaries;

(d) Whether the special district is able to provide services at a reasonable cost compared with the cost ~~which~~ THAT would be imposed by other entities in the surrounding area to provide similar services in the surrounding area OR BY THE FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT THAT HAS AGREED TO INCLUDE THE PROPERTY TO BE EXCLUDED FROM THE SPECIAL DISTRICT;

(f) The economic impact on the region and on the special district, surrounding area,

and state as a whole if the petition is denied OR THE RESOLUTION IS FINALLY ADOPTED;

(4) (a) (I) Except as provided in subparagraph (II) of this paragraph (a) AND if the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition OR RESOLUTION or some portion thereof should be excluded from the special district, it shall order that ~~such~~ THE petition be granted OR THAT THE RESOLUTION BE FINALLY ADOPTED, in whole or in part.

(II) (A) If the property to be excluded from the special district will be served by a special district not yet organized, the board shall not order that ~~such~~ THE petition be granted OR THAT THE RESOLUTION BE FINALLY ADOPTED until ~~such~~ THE special district has been organized pursuant to part 3 of this article.

(B) IF THE PROPERTY TO BE EXCLUDED FROM THE SPECIAL DISTRICT WILL BE SERVED BY A FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT AS PROVIDED IN SUBSECTION (1.5) OF THIS SECTION, THE BOARD SHALL NOT ORDER THAT THE PETITION BE GRANTED OR THAT THE RESOLUTION BE FINALLY ADOPTED UNTIL THE FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT HAS ADOPTED A RESOLUTION AGREEING TO INCLUDE THE PROPERTY IN THE DISTRICT IMMEDIATELY AFTER THE EFFECTIVE DATE OF THE EXCLUSION ORDER AND HAS FILED THE RESOLUTION WITH THE COURT.

(C) Notwithstanding any other provision of this article to the contrary, the property to be excluded may be included within the boundaries of ~~such~~ THE proposed special district.

(b) Upon granting ~~such~~ THE petition OR FINALLY ADOPTING THE RESOLUTION, the board shall file a certified copy of the order of the board ~~granting such exclusion~~ EXCLUDING THE PROPERTY FROM THE DISTRICT with the clerk of the court, and, EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (4), the court shall ~~thereupon~~ order the property to be excluded from the special district AND, IF APPLICABLE, INCLUDED INTO THE FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT THAT HAS PREVIOUSLY AGREED TO INCLUDE THE PROPERTY AS PROVIDED IN SUBSECTION (1.5) OF THIS SECTION.

(c) (I) IF THE PROPERTY TO BE EXCLUDED FROM THE SPECIAL DISTRICT WILL BE SERVED BY A FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT THAT HAS PREVIOUSLY AGREED TO INCLUDE THE PROPERTY AS PROVIDED IN SUBSECTION (1.5) OF THIS SECTION AND THAT HAS A HIGHER MILL LEVY THAN THE SPECIAL DISTRICT AND AFTER THE CERTIFIED COPY OF THE ORDER OF THE BOARD EXCLUDING THE PROPERTY FROM THE DISTRICT IS FILED WITH THE CLERK OF THE COURT, THE COURT SHALL DIRECT THE QUESTION OF EXCLUDING THE AREA FROM THE SPECIAL DISTRICT AND INCLUDING IT IN THE FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT WITH A HIGHER MILL LEVY TO THE ELIGIBLE ELECTORS OF THE AREA SOUGHT TO BE EXCLUDED. THE COURT SHALL ORDER THE SECRETARY TO GIVE PUBLISHED NOTICE, AS PROVIDED IN PART 2 OF ARTICLE 5 OF TITLE 1, C.R.S., OF THE TIME AND PLACE OF THE ELECTION AND OF THE QUESTION TO BE SUBMITTED, TOGETHER WITH A SUMMARY OF ANY CONDITIONS ATTACHED TO THE PROPOSED EXCLUSION. THE ELECTION SHALL BE HELD WITHIN THE AREA SOUGHT TO BE

EXCLUDED AND SHALL BE HELD AND CONDUCTED, AND THE RESULTS THEREOF DETERMINED, IN THE MANNER PROVIDED IN TITLE 1, C.R.S. THE BALLOT SHALL BE PREPARED BY THE DESIGNATED ELECTION OFFICIAL AND SHALL CONTAIN THE FOLLOWING WORDS:

"SHALL THE FOLLOWING DESCRIBED AREA BE EXCLUDED FROM THE _____ DISTRICT, WHICH HAS A CURRENT MILL LEVY OF _____, AND BECOME A PART OF THE _____ DISTRICT, WHICH HAS A CURRENT MILL LEVY OF _____, AND UPON THE FOLLOWING CONDITIONS, IF ANY?"

(INSERT GENERAL DESCRIPTION OF AREA)

(INSERT ACCURATE SUMMARY OF CONDITIONS)

FOR EXCLUSION FROM _____ DISTRICT AND INCLUSION
IN _____ DISTRICT
AGAINST EXCLUSION FROM _____ DISTRICT"

(II) IF A MAJORITY OF THE VOTES CAST AT THE ELECTION PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) ARE IN FAVOR OF EXCLUSION TO BECOME A PART OF ANOTHER DISTRICT AND THE COURT DETERMINES THE ELECTION WAS HELD IN ACCORDANCE WITH TITLE 1, C.R.S., THE COURT SHALL ENTER AN ORDER WITH ANY CONDITIONS SO PRESCRIBED EXCLUDING THE AREA FROM THE SPECIAL DISTRICT AND INCLUDING IT IN THE FIRE PROTECTION DISTRICT OR COUNTY FIRE IMPROVEMENT DISTRICT WITH A HIGHER MILL LEVY. THE VALIDITY OF THE EXCLUSION TO BECOME A PART OF ANOTHER DISTRICT MAY NOT BE QUESTIONED DIRECTLY OR INDIRECTLY IN ANY SUIT, ACTION, OR PROCEEDING, EXCEPT AS PROVIDED IN ARTICLE 11 OF TITLE 1, C.R.S.

(d) The order of exclusion ENTERED PURSUANT TO PARAGRAPH (b) OR (c) OF THIS SUBSECTION (4) shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that ~~such~~ THE bonded indebtedness is then scheduled to be retired. After July 1, 1993, failure of the order for exclusion to recite the existence and scheduled retirement date of ~~such~~ THE indebtedness, when due to error or omission by the special district, shall not constitute grounds for correction of the omission of a levy on the excluded property from the assessment roll pursuant to section 39-5-125, C.R.S.

(5) (a) If the board, after considering all of the factors set forth in subsection (3) of this section, determines that the property described in the petition OR RESOLUTION should not be excluded from the special district, it shall order that the petition be denied OR THAT THE RESOLUTION BE RESCINDED.

(b) (I) Any petition ~~which~~ THAT is denied OR RESOLUTION THAT IS FINALLY ADOPTED may be appealed to the board of county commissioners of the county in which the special district's petition for organization was filed for review of the board's decision. ~~Such~~ THE appeal shall be taken no later than thirty days after ~~such denial~~ THE DECISION.

(II) Upon appeal, the board shall consider the factors set forth in subsection (3) of

this section and shall make a determination whether to exclude the properties mentioned in the petition OR RESOLUTION based on the record developed at the hearing before the special district board.

(c) (II) On appeal, the court shall review the record developed at the hearing before the special district board and, after considering all of the factors set forth in subsection (3) of this section, shall make a determination whether to exclude the properties mentioned in the petition OR RESOLUTION.

SECTION 2. Effective date. This act shall take effect July 1, 1994.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 1994