

May 19, 2016

Colorado Governor Signs Bill Allowing District Activity to Proceed

Yesterday, Colorado Gov. John Hickenlooper signed into law SB 16-211, which protects the most common tool for financing and constructing improvements necessary to serve new and existing development – districts formed under Title 32 of Colorado Revised Statutes. The bill validates district elections held on or before May 3, 2016, and prevents a challenge to any such election on the grounds that the electors were not properly qualified. These elections were called into question following the opinion issued by the Colorado Court of Appeals on April 21, 2016 (*Landmark Towers Association v. UMB Bank*, 14CA2099 & 14CA2463, Colorado Court of Appeals, April 21, 2016).

The new legislation takes effect immediately upon the governor's signature and affects districts which have already been formed, district directors who have been elected, and debt which has been issued based on elections which occurred prior to April 21, 2016. It protects these from challenge on the basis that the electors voting in such elections were not properly qualified. The bill does allow challenges to the recent May 3, 2016 election to proceed, but only if brought within the statutory time period for such challenges.

The bill does not foreclose other types of challenges, such as constitutional challenges – only those challenges which are based on the qualifications of the electors voting in such an election. Existing districts seeking to issue previously approved debt, or to refinance existing debt, or simply to continue conducting the business of providing infrastructure and services to their residents where any required voter authorization occurred prior to April 21, 2016, may now proceed to do so. The bill also ratifies actions taken by existing district boards, where the directors were qualified to be directors by virtue of having option contracts to purchase real property within the district.

Questions remain regarding the best and most legally defensible method to qualify electors and directors in forming new districts going forward when voters eligible to vote in such an election are not present within the district. The Colorado statutes continue to provide that holders of an option contract that includes an obligation to pay property taxes is a legal method of qualifying electors. However, because of the Court of Appeals opinion that the purchase contracts used in the formation of that district were not proper, doubt remains whether this method is appropriate going forward. Option contracts or purchase and sale agreements will still be used to qualify electors when the conveyance of a deed is not possible or practical under the circumstances of the particular project, however, the terms of the options or purchase and sale agreements may be drafted taking into consideration not only the provisions of Colorado statutes governing the qualification of electors, but also the Court of Appeals decision.

We anticipate that one or more working groups will consider this question in greater depth over the next several months, and that industry consensus recommendations and/or potential legislation will be forthcoming.

Please contact [Carolynne C. White](mailto:cwhite@bhfs.com) (cwhite@bhfs.com, 303.223.1197), to get an expanded analysis of this court case or the proposed legislation in relation to a specific project or matter.

May 19, 2016

Our [Brownstein Public Policy](#) team is pleased to provide you with updates on legislative topics on as frequent a basis as would be useful for you. The updates include committee actions, record of votes and testimony before committees. These can be sent on a weekly basis or as action takes place on a bill and would be in addition to these updates. Please contact a member of our Public Policy team for further information.

Carolynne C. White

Shareholder

cwhite@bhfs.com

303.223.1197

This document is intended to provide you with general information regarding the legislative and regulatory issues summarized herein. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.