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0153 Proposed Codification of Urban Service District Laws

Report to the Colorado General Assembly

**Proposed Codification
of
Urban Service District Laws**



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 153

November, 1970

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OF THE
COLORADO GENERAL ASSEMBLY

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* * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

PROPOSED CODIFICATION OF
URBAN SERVICE DISTRICT LAWS

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 153
December 1970

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LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
AREA CODE 303

November 20, 1970

To Members of the Forty-eighth Colorado General Assembly:

In accordance with the provisions of House Joint Resolution No. 1034, 1969 Session, the Legislative Council herewith submits the accompanying report and recommendations pertaining to matters of Local Government.

The report of the Committee appointed to carry out this study was accepted by the Legislative Council with recommendation for favorable consideration by the First Regular Session of the Forty-eighth Colorado General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL/mp

COLORADO GENERAL ASSEMBLY



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LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
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November 20, 1970

Representative C. P. Lamb
Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

Pursuant to the provisions of House Joint Resolution No. 1034, 1969 Session, the Committee on Local Government submits the following report for consideration by the Legislative Council.

The Committee's findings and recommendations are based upon: statements made to the Committee by many individuals and groups concerned about the problems of special district government; studies and materials provided by the Division of Local Government; materials and data developed by the Governor's Local Affairs Study Commission created in 1963; and information supplied by the Legislative Council staff.

Respectfully submitted,

/s/ Representative John D. Fuhr
Chairman
Committee on Local Government

JDF/mp

FOREWORD

The Committee on Local Government was established for a two-year period by the Legislative Council pursuant to the provisions of House Joint Resolution No. 1034, 1969 Session. Those legislators appointed to the Committee were:

Rep. John D. Fuhr Chairman	Rep. Ray H. Black
Sen. Anthony F. Vollack Vice Chairman	Rep. Betty Ann Dittmore
Sen. Hugh C. Fowler	Rep. Donald J. Horst
Sen. Kingston G. Minister	Rep. Raymond P. Kogovsek
Sen. Ruth S. Stockton	Rep. Edward I. Newman
Sen. Ted L. Strickland	Rep. Clarence Quinlan
	Rep. Jerome C. Rose
	Rep. Paco Sanchez

Under the terms of the aforementioned resolution, the Committee centered its attention during the last two interim study periods on developing a proposal for a major revision of Colorado's laws governing the establishment and operation of special districts.

Many individuals and groups appeared before the Committee in the course of its deliberations. Included among them were representatives of the following: Colorado Municipal League; Colorado Association of County Commissioners; League of Women Voters; Division of Local Government; City of Lakewood, Colorado; Willson and Lamm Attorneys; Dawson, Nagel, Sherman and Howard, Attorneys; Legislative Drafting Office; Colorado Labor Council; and the Governor's Local Affairs Study Commission. In addition, many individuals representing several different types of special districts appeared before the Committee.

The Committee expresses its appreciation for the contributions of all of those who participated in the discussion. The Committee would like to give particular credit to the efforts and contributions of Messrs. Ken Bueche, Colorado Municipal League and James Willson, Willson and Lamm, Attorneys.

Wallace Pulliam, Research Associate, and Brent Slatten, Research Assistant, Legislative Council staff, had the principal staff responsibilities for assisting the Committee and preparing the Committee's report. Vince Hogan, Legislative Drafting Office assisted the Committee in preparing the text of the proposed legislation.

TABLE OF CONTENTS

	<u>Page</u>
LETTERS OF TRANSMITTAL.....	iii
FOREWORD.....	vii
TABLE OF CONTENTS.....	ix
COMMITTEE FINDINGS AND RECOMMENDATIONS.....	xiii
Special Districts - General Provisions.....	xiv
Organizational Procedures.....	xiv
Inclusion and Exclusion of Territory.....	xv
Size and Terms of Boards.....	xv
Types of Services Authorized.....	xvi
Specific Powers and Duties - Water, Sanitation and Fire Protection Districts.....	xvi
Charges for Availability of Service.....	xvi
Right to Sell and Lease Water.....	xvii
Special District Elections.....	xviii
TEXT OF SUGGESTED LEGISLATION.....	1
Article 23: Special Districts - General Provisions..	1
Declaration of Purpose.....	1
Definitions.....	1
Special districts - purpose - territory.....	3
Filing of service plan.....	5
Public hearing - procedures.....	7
Scope of authority.....	8
Service plan - grounds for disapproval.....	9
Municipality or special district to provide services.....	10
Jurisdiction of Courts.....	11
Petition for formation.....	11
Bond of petitioners.....	12
Notice of hearing.....	13
Hearing on petition, objection, exclusions - election procedures.....	13
Certification of election returns.....	14
Filing decree.....	15
Board to file oath and bond.....	16
Organization of board - compensation - audit - removal.....	16
Meetings - vacancies.....	17
General powers.....	19
Contracts of district - requirements.....	21

	<u>Page</u>
Changes in service plan - requirements	
- procedure.....	21
Construction of facilities - duties.....	24
Revenues of district - collection.....	25
Mill levy limits.....	25
Levy and collection of taxes.....	27
Levies to cover deficiencies.....	28
Inclusion in or exclusion from district	
- procedures.....	28
Court proceedings - inclusion - exclusion.....	31
Effect of inclusion or exclusion.....	33
Power to issue revenue bonds - terms.....	33
Power to incur indebtedness - interest	
- maturity - denominations.....	34
Debt question submitted to voters -	
resolution.....	35
Effect - subsequent elections.....	36
Correction of faulty notices.....	37
Early hearings.....	37
Refunding bonds.....	37
Limitations upon issuance.....	38
Use of proceeds of refunding bonds.....	38
Combination of refunding and other bonds.....	39
Board's determination final.....	39
Dissolution of districts.....	40
Transition provisions.....	40
Saving clause.....	41
 Article 24: Special Powers and Duties - Water, Sanitation, Fire District.....	 41
Additional powers.....	41
Definitions.....	41
Water, sanitation - power to compel	
connection.....	42
Water, sanitation - charge for availability....	43
Water, sanitation - right to sell or lease	
water.....	44
Duties and responsibilities of fire pro-	
tection districts.....	45
Powers and authority of fire protection	
districts.....	46
Crimes - penalties.....	48
Civil service system - fire districts.....	49
 Article 25: Special District Elections.....	 54
Definitions.....	54
Organizational election - new district -	
conduct.....	55
Board of directors of district to conduct	
elections.....	58
No registration required.....	58

	<u>Page</u>
Directors - number - election - term.....	58
Reorganization of board - election - compliance.....	60
Notice of election.....	61
Copies of election laws and manual provided....	62
Qualifications and nomination of candidates for district director.....	62
Objections to nominations.....	63
Judges of election.....	63
Oath of judges - compensation.....	63
Precincts and polling places.....	64
Ballots, ballot boxes and voting machines.....	65
Arrangements for voting.....	66
Hours of voting.....	66
Watchers.....	67
Judge to keep poll book.....	67
Preparing to vote - affidavit.....	67
Manner of voting in precincts which use paper ballots.....	68
Disabled voter - assistance.....	68
Spoiled ballots.....	69
Count and certification of votes.....	69
Defective ballots.....	70
Return of ballot box, poll book, and registration list.....	70
Preservation of records.....	70
Use of voting machines.....	71
Judges to inspect machines.....	71
Ballot labels - voting machines.....	71
Close of polls and count of votes - voting machines.....	71
Absentee voting.....	72
Challenges.....	73
Canvas of votes - certificate of election.....	73
Imperfect returns.....	74
Corrections.....	74
Recount of votes - board to conduct.....	74
Tie - lots - notice to candidates.....	75
Contests.....	75
District judge to preside - bond.....	75
Controversies.....	76
District attorney or attorney general to prosecute.....	76
Sufficiency of complaint - judicial notice.....	76
Election offenses - penalties.....	77
Oath and bond of directors.....	77
Officers subject to recall.....	78
Recall - procedure.....	78
Recall petition - sufficiency - review.....	79
Recall election - resignation.....	80
Vacancies.....	80

	<u>Page</u>
Article to be liberally construed.....	81
Repeals.....	81
Effective date.....	82
Safety clause.....	82

COMMITTEE FINDINGS AND RECOMMENDATIONS

By action of the First Regular Session of the Forty-seventh General Assembly, the Legislative Council was directed to appoint a committee to study the organization, operation, financing and other aspects of special districts and to examine the feasibility of recodifying the laws under which they are established. The Council was directed under the terms of House Joint Resolution No. 1034 to report its findings to the First Regular Session of the Forty-eighth General Assembly.

At the outset of its study, the "Committee on Local Government" elected to examine some of the problems posed by so-called "special" or "urban" service districts and to codify the laws pertaining thereto. Special or "urban" service districts are formed under the provisions of Chapter 89 of Colorado's Revised Statutes 1963, as amended, and are generally established in unincorporated urban areas. It is this chapter (89) that the Committee suggests be extensively revised.

The Committee simply did not have time to thoroughly examine and make recommendations on the problems or needs of rural resource (agricultural) districts; nor did it include the laws governing municipal improvement districts in its study. Articles 2, 4, and 8, which deal directly with the organization and operation of municipal improvement districts; Article 15, Metropolitan Sewage Districts; Article 16, which allows the exclusion of territory annexed to a municipality; and Articles 20, 21, and 22 (the Regional Transportation, Urban Drainage and Flood Control, and Dissolution Acts respectively) are not included in the Committee's proposed codification of special district law.

In 1969, the Committee initiated a revision of urban service district law by recommending a bill to the 1970 session of the General Assembly concerning the dissolution of districts. This proposal was designed to encourage special district consolidation and to allow newly incorporated areas (the City of Lakewood, Colorado is an example) to combine the services offered by special districts under one multi-purpose government. The General Assembly enacted this recommendation in 1970 as Article 22 of Chapter 89. Of course, Article 22 will not, under the terms of the Committee's recommendation, be repealed, but some technical changes may be needed if the Committee's proposed revision is enacted.

Upon examination, the Committee found that Chapter 89 of Colorado's statutes has evolved largely by piece-meal amendment. Furthermore, the Governor's Local Affairs Study Commission reported that the evolutionary growth of these laws resulted in a chapter lacking uniformity, logic, and integrity both as to policy and implementing directives. For example, Chapter 89

allows water districts to be formed under three separate statutes, while sanitation and fire protection districts can be formed under at least two separate laws. In addition, none of the special district acts contain detailed procedures to be followed in conducting elections. In any event, the Committee believes that there is need for uniformity in the formation, organization, operation, and the conduct of elections for special districts in order that the general public may more easily understand the laws governing them. The accompanying proposal attempts to codify various articles of Chapter 89 into one law governing a variety of urban service districts.

Summary of Codification

The proposed legislation is divided into three articles: Article 23, Special Districts - General Provisions; Article 24, Special Powers and Duties - Water, Sanitation and Fire Districts; and, Article 25, Special District Elections.*

Special Districts - General Provisions

The portion of the recommended recodification labeled Article 23 -- General Provisions -- contains the major compilation of the proposed new special district law. This article is based, to a large extent, upon the provisions found in the Special District Control Act of 1965 (89-18-1 et seq.) and in the law governing water and sanitation districts (89-5-1 et seq.). However, several new approaches were adopted in an effort to improve the structure and operation of special districts and, hopefully, to make them more responsive to the needs of the people they serve.

Organizational Procedures. The Committee was impressed with the procedures contained in the Special District Control Act and therefore retained them almost entirely. Nevertheless some procedures in the Control Act were modified and strengthened. Of special significance is the change which removes the

* The three articles have been given definite numbers corresponding to the Colorado Revised Statutes 1963, as amended, in accordance with the policy followed by the Legislative Drafting Office and the Revisor of Statutes. Because the recodification suggests that most of the existing articles of Chapter 89 should not be repealed until July 1, 1972, these provisions would be placed at the end of Chapter 89 if adopted by the General Assembly.

responsibility of making the initial determination of the relevancy of, and need for, the proposed district from the district court to the Board of County Commissioners. The Committee believes that responsibility for authorizing the formation of a district should be vested in the Commissioners rather than the court. Once the County Commissioners have rendered a decision, the district court is charged with the responsibility of insuring that procedures followed in the formation of a district are legally valid, or that the decision of the Commissioners has not been arbitrary or capricious. The Committee believes that such an approach not only would tighten controls on the formation of special districts but also would place the decision-making responsibilities where they belong.

Inclusion and Exclusion of Territory. Provisions allowing territory to be included in, and excluded from, a district were clarified and strengthened. In addition to developing uniformity, the Committee elected to tighten the inclusion provisions by requiring that any such action must conform to the district's original service plan. Thus, inclusion of land cannot be automatically used to expand the size and authority of a district unless, and until, such action is approved in the same manner as the original service plan was approved -- by the County Commissioners.

In developing these new provisions on inclusion and exclusion, the Committee removed sections in existing law which allow automatic exclusions of property of a certain size or of a certain type. The courts have ruled such provisions unconstitutional as being discriminatory. See: Mountain States Telephone and Telegraph v. Animas Mosquito Control District, 380 P. 2d 560 and Colorado Interstate Gas Company v. Sable Water District, 380 P.2d 569. In any event, the Committee believes that the language in the proposed draft contains adequate procedures for the exclusion of property if it can be shown that valid reasons for such exclusion exist.

Size and Terms of Boards. The Committee agreed that the various laws governing the size, length of term, etc., of district boards needs revision. The Committee proposes that the size of boards of directors be standardized and that the date of special district elections be made uniform. The Committee proposes that boards be composed of either three or five members (depending on a district's population or the number of services it provides); that the date of elections be standardized to the first Tuesday following the first Monday in May of each even-numbered year; and that the length of the terms of office be four years. It is hoped that such changes, combined with the establishment of a specific law governing special district elections, will help increase participation in special district elections by making them more visible to the public and, as a result, make district boards more responsive to the needs of the people they serve.

Types of Services Authorized. The Committee believes that it should be possible to establish a district to provide one or more related services, but the proposal prohibits multi-purpose districts. For example, a single district could be formed to provide water, sanitation, solid waste disposal, sewers, and fire protection or a combination thereof, but the same district could not add recreation and library programs.

It should be noted that under the provisions of the Metropolitan District Act of 1947 it may be possible to form a district to provide a large number of services and functions. However, because of ambiguities within the act and legal questions on some of the powers granted, legal counsel for bonding firms are reluctant to approve bonds for district combinations other than water, sanitation, and fire protection. Furthermore, the unique combinations of services apparently authorized by the Metropolitan District Act would appear to include almost all of the functions of a municipality; but, such a district would not be subject to the same constitutional and statutory limitations and responsibilities. Of course, if this were retained, many areas might elect to form such districts rather than incorporating as a city or town. The Committee believes that general purpose government should be developed within the traditional framework of cities, towns, and counties only.

Specific Powers and Duties of Water, Sanitation and Fire Protection Districts

Generally, all districts are granted the authority to borrow money; to enter into contracts; to sue and be sued; to acquire and dispose of property; to construct, equip and operate facilities; to have and exercise the power of eminent domain, etc. These general powers do not provide sufficient authority for districts providing fire and water and sanitation services to carry out their programs. For this reason, the Committee recommends the establishment of a separate article listing the special powers that apply to these districts. For instance, by the very nature of the services they provide, fire protection districts are granted some powers and duties different from those given to any other district. Specifically, fire protection districts, under present law, are empowered and directed to provide a variety of fire protection and prevention functions. The Committee accepted these provisions and simply recommends that they be retained in their entirety in the specific powers article.

Charges for Availability of Service. The Committee added new language allowing water and sanitation districts to levy minimum charges for making services and facilities available to undeveloped property within such districts. This concept is not new. In 1969 the General Assembly enacted House Bill 1460 (now

Early in the Committee's discussion, it became evident that a major difficulty would be determining an acceptable definition of a "qualified elector". Traditionally, qualified electors in special districts have been owners of real property since any debt incurred usually places a lien on the property in the district. When the Committee began its discussions, this limitation was being challenged in the federal courts. Two earlier court decisions had raised questions about the legality of limiting the franchise to property taxpaying electors. In the cases of Kramer v. Union Free School District No. 15 /89 S.Ct. 1886 (1969) and Cipriano v. City of Houma /89 S.Ct. 1897 (1969) the United States Supreme Court ruled that statutory provisions limiting the franchise in local bond elections to property taxpayers was unconstitutional. Neither of these cases concerned general obligation bonds. However, by inference, many attorneys believed that these decisions cast doubt on the legality of retaining the property taxpayer limitations in elections concerning the issuance of general obligation bonds. This question was answered by the Supreme Court in City of Phoenix v. Kolodziejki /38 L.W. 4596 (1970), when the court declared that state laws limiting the franchise to real property owners in general obligation bond elections violate the Equal Protection Clause of the United States Constitution.

For this reason, the draft election code for special districts does not limit elections to taxpaying electors. The Committee did include a provision which allows only real property owners in the district to sign the original petition for a district's organization.

In developing the attached draft of election laws for special districts, the Committee borrowed heavily from the School District Election Law -- 123-31-1 et seq., C.R.S. 1963, as amended. The Committee also used many concepts and provisions found in the Municipal Election Law -- 49-25-1 et seq., C.R.S. 1963, as amended.

cited as 89-5-13 (12) C.R.S. 1963, as amended) which allows a district to levy charges for making services available to undeveloped property; but such charges could be made only under certain conditions. For example, charges could be levied only if the district's valuation for assessment was less than three times the amount of outstanding general obligation indebtedness of the district and if the district had a total mill levy of not less than ten mills.

During the Committee's examination of these provisions, it received information that the limitations incorporated into House Bill 1460 were so restrictive as to make the concept unworkable. The Committee also believes that the existence of such services can significantly affect the value of property. For this reason, the Committee believes that it would not be unreasonable to assess a property owner a minimum charge for the availability of services of a district.

The new language proposed by the Committee is less restrictive than that contained in House Bill 1460, but it specifically excludes land zoned and being used for agricultural purposes.

Right to Sell or Lease Water. The Committee added new language incorporating a concept not found in existing special district law. This language -- see 89-24-4 of the draft -- allows a district to sell or lease treated water to help finance tertiary (three-stage) water treatment facilities. It is believed this will encourage more rapid development of adequate water treatment facilities. The proposal expands upon the provision allowing water to be reused (to conserve this limited resource) enacted in the Water Right Determination Act of 1969 -- 148-2-6, C.R.S. 1963, as amended.

Special District Elections

In actual practice, testimony to the Committee revealed that election procedures for special districts are not uniform, even for districts operating under the same articles. Generally, the various election procedures contained in Chapter 89, make reference to the General Election Laws. However, general elections are partisan elections and, as a result, the provisions often do not meet the needs of special districts. In addition, the fact that the laws simply direct the board to conduct the elections "in as nearly as may be in the same manner as the general elections" results in a situation where the secretary of each board may utilize different procedures. The Committee recognizes that little interest is shown in many special district elections; thus the costs of such elections need to be kept to a minimum. Nevertheless, the statutes should contain safeguards stringent enough to assure the integrity of elections.

TEXT

EXPLANATION

A BILL FOR AN ACT

CONCERNING SPECIAL DISTRICTS.

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

SECTION 1. Chapter 89, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW ARTICLES to read:

ARTICLE 23

Special Districts - General Provisions

89-23-1. Declaration of purpose. It is hereby declared that the orderly creation of special districts having the purposes, powers, and authority provided in this article will serve a public use and will promote the health, safety, security, and general welfare of the inhabitants thereof and of the people of the state of Colorado. Furthermore, it is the intent of this article to prevent unnecessary proliferation and fragmentation of local governments and to avoid excessive diffusion of local tax sources.

89-23-2. Definitions. (1) As used in articles 23, 24, and 25 of this chapter, unless the context clearly indicates otherwise:

(2) "Board" means the board of directors of a special district.

(3) "Secretary" means the secretary of the board.

(4) "Regular election" means the election held on the Tuesday succeeding the first Monday of May in every even-numbered year held for the purpose of electing members to the boards of directors of special districts as provided in article 25 of this chapter 89, and for submission of other public questions if any.

(5) "Special election" means any election called by the board for submission of public questions and

The declaration combines the language in Article 5 of Chapter 89 -- Water and Sanitation District Act -- with the language in the declaration contained in the Special District Control Act -- Article 18 of Chapter 89.

(2) Similar to 89-3-2 (8) -- Metropolitan Districts (1947 Act).

(3) New. Because of the duties and responsibilities a secretary may be given under the terms of the draft, the committee believes that the addition of this definition was necessary.

(4)(5) Taken in part from 123-31-1 and 2 and 123-31-4 -- The School District Election Law -- and rewritten to fit the context and needs of this act. In addition, the committee elected to establish a uniform date for all special district elections.

TEXT

EXPLANATION

other matters, such election to be held on a Tuesday other than a regular election day.

(6) "Publication" or "publish" means once a week for three consecutive weeks, by three publications in at least one newspaper of general circulation in the district. It shall not be necessary that publication be made on the same day of the week in each of the three weeks, but not less than twelve days, excluding the day of the first publication but including the day of the last publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

(7) "Organizers" means the persons filing a service plan with the board of county commissioners for the formation of a proposed special district.

(8) The term "written notice" means notification by either registered or certified United States mail.

(9) The term "mailed" means depositing a letter or parcel in the United States mails, first class postage prepaid.

(10) A "taxpaying elector" of a district is an elector of the district who, or whose spouse, owns taxable real or personal property within the district or the area to be included in the district, whether said person resides within the district or not. Taxable property is property subject to general ad valorem taxes.

The definition of "publication" is similar to that provided in a number of special district acts. The definition changes the minimum time between first and last publication from "fourteen days" to "twelve days", the same time limit adopted in House Bill 1013, 1970 Session - The Special District Dissolution Act (Chapter 73, Session Laws of Colorado 1970).

The term "organizers" replaces the term "petitioners" as used in existing law. The first procedure for forming a district is the filing of a service plan with the county commissioners, rather than petitioning the court.

The terms "written notice" and "mailed" were added to clearly distinguish the type of notice required. For example, persons (or entities) which enter the organizational proceedings as "interested parties" must be notified of hearings by written notice -- registered or certified mail. Once a decision is reached, the board of county commissioners must notify interested parties of any actions taken by first class mail. In addition to the above, notice must also be given by publication.

TEXT

89-23-3. Special districts - purpose - territory. (1) (a) A "special district" or "district" is a quasi-municipal political subdivision of the state created to secure for the inhabitants thereof one of the following services or combinations of services but shall not include districts created pursuant to articles 2 and 4 of this chapter 89.

(b) Water; sanitation, including solid waste, storm, or sanitary sewerage collection, treatment, or disposal; fire protection; or any combination thereof; or

(c) Parks; recreation, including television relay translator facilities; library services; or any combination thereof; or

(d) Cemetery; or

(e) Hospital; including convalescent, nursing home, and other health and medical care services, and ambulance services; or any combination thereof; or

(f) Streets; including curbs, gutters, sidewalks, and the lighting thereof.

EXPLANATION

This language incorporates concepts found in a number of special district acts. For example, upon formation a water and sanitation district becomes a "governmental subdivision of the state of Colorado and a body corporate with all the powers of a public or quasi-municipal corporation" -- 89-5-7 (8). Specifically excluded (Articles 2 and 4 of Chapter 89) are special improvement districts established solely within municipal boundaries.

The concept of allowing districts to be formed to provide a combination of services is somewhat new. That is, in some instances districts can now be formed to provide combinations of services, e.g., under 89-3-1 et seq. and 89-5-1 et seq. a district may provide water, sanitary sewers, storm drainage, etc. Furthermore, though seldom used, the Metropolitan District Act (1947) allows a special district to be formed to provide almost all services.

The committee considered allowing a district to provide any service, but this concept was rejected. If there is need for a great number of services to be

TEXT

EXPLANATION

-4-

(2) Any district organized to provide one or more but less than all of the services authorized by the provision of paragraphs (b), (c), or (e) of subsection (1) of this section may be authorized to provide any of the additional services permitted under the paragraph under which said district is operating by complying with the procedures specified in section 89-23-21, but no district shall be organized for more purposes than those specified in any single paragraph of subsection (1) of this section.

vided by a district, the district would, in effect, be operating as a municipality. It is the intent of the committee that broad based local government should be provided by counties and cities in Colorado. Furthermore, it is the committee's understanding that the Metropolitan District Act has not been used to form a multiple service government.

Section 3 is somewhat more restrictive than the Metropolitan District Act. That is, it allows a district to be formed to provide a combination of related services -- water, sewers, solid waste disposal and fire protection (fire protection is included because of the need for available water), but a district cannot be formed to provide all of the listed services.

Essentially all of the services listed in (e) may well be provided by some hospital districts, even though existing law does not specifically authorize them to do so. But, convalescent, nursing home, or ambulance services may be provided as a direct portion of a district's overall hospital program.

(2) New: Subsection (2) allows any district which was originally organized to provide one (or more) of the services listed to petition for authorization to add additional services. Thus, a park and recreation district could petition to add library services. Such changes must, however, be approved by a process similar to

TEXT

(3) An existing district may be located entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and may include non-contiguous tracts or parcels of property, but no district shall hereafter be formed which is located entirely within the boundaries of a municipality or which includes only a portion of a municipality.

(4) (a) A municipality which is to be included within a proposed district may be excluded from the district if a majority of the electors within the municipality vote for such exclusion.

(b) Elections for this purpose may be ordered by the district court upon receipt of a petition signed by forty percent or two hundred electors of the municipality, whichever is less, or upon receipt of a resolution by the governing body of such municipality requesting such election.

89-23-4. Filing of service plan. (1) (a) The organization of a special district shall be initiated by the filing of a service plan with the board of county commissioners of each county which has territory included within the boundaries of the proposed district.

(b) The service plan shall consist of a financial survey and preliminary engineering, or architectural survey showing how the proposed services or facilities, or both are to be provided and financed. The service plan shall include a map and legal description of the territory to be included within the proposed district, a statement of the ultimate potential area of service, an estimate of the present and future population and assessed valuation of the proposed district, and shall generally describe the facilities to be constructed, the standards of

EXPLANATION

that followed in the approval of the original service plan. (See 89-23-21 in this draft.)

(3) Based upon 89-5-2 (3) -- Water and Sanitation Districts -- and similar provisions in most special district laws. In order for a new district to include municipal areas, it must include all of the municipality as well as unincorporated areas.

(4) New: Subsection (4) is intended to help prevent the proliferation of special districts in areas where such services should be provided by existing municipalities and to prevent further diffusion of governmental responsibility.

Sections 4 through 7 are based directly upon the Special District Control Act -- 89-18-4, C.R.S. 1963, 1965 Supp. In order to bring the Control Act directly into this act, the language adopted by the committee simply states that the first step in formation of a district is to file a service plan with the counties. Language in the Control Act was edited, but the basic concepts and procedures were not substantially altered. Many changes simply clarify language and some strengthened service plan requirements. For example, the Control Act does not require the inclusion of estimates of the ultimate potential area of service or of the future population of the district.

TEXT

such construction, a preliminary estimate of costs, including the cost of acquiring land, engineering services, legal services, proposed indebtedness, including estimated maximum net effective interest rates and discounts, and other major expenses related to the formation and operation of the district. Such service plan shall also outline any arrangement or proposed agreement with any other political subdivision for the performance of any services between the proposed special district and such political subdivision. If a form of the proposed agreement is available it shall be attached to the service plan.

(2) Such service plan shall not include any estimates of revenue which might accrue to the district as a result of charges for making services or facilities available to property within the district.

(3) Each service plan filed shall be accompanied by a processing fee set by the board of county commissioners not to exceed two hundred dollars which shall be deposited into the county general fund. All, or such part of the deposit as is necessary shall be applied to the costs related to the hearing prescribed by section 89-23-5, including notice, publication, and the recording of the proceedings either stenographically or electronically. Such record need not be transcribed unless proceedings for judicial review are initiated, in which case, the party seeking judicial review shall pay the cost of the transcript.

(4) Copies of the service plan of the proposed district shall be provided by the organizers and said copies shall be distributed to any county or regional planning commission having jurisdiction and to the state planning office by the county clerk and recorder. The state planning office and any such planning commission shall be present if recommendations consistent with this article are to be made to the board of county commissioners at said hearing.

EXPLANATION

Other concepts in the Control Act are incorporated in later provisions.

TEXT

89-23-5. Public hearing - procedures. (1) Such service plan shall be filed with the county clerk and recorder of each county in which the district lies. At the next meeting of the board of county commissioners immediately following the filing of a service plan, the board of county commissioners shall set a date for a public hearing on the service plan of the proposed district, which hearing date shall be not less than thirty nor more than forty-five days thereafter.

(2) The board of county commissioners shall provide written notice of the date, time, and location of the hearing to the persons submitting the service plan and to the governing bodies of the existing municipalities and special districts as provided by this subsection. Special districts which have boundaries within a radius of five miles of the proposed district, providing any of the services to be provided by the proposed district and which have levied an ad valorem tax within the next preceding tax year, shall be so notified. Municipalities which have boundaries within a radius of five miles of the proposed district shall be so notified. Such written notice shall be mailed at least twenty-one days prior to the date of the hearing. Any municipality or special district may become an interested party to such proceeding by filing notice with the board of county commissioners at least three days prior to the hearing of its intent to enter the proceedings. The board of county commissioners shall also publish notice of the date, time, location, and purpose of such hearing, the first such publication to be at least twenty days prior to the hearing date. Such publication shall constitute constructive notice to the residents and property owners within the proposed district, who may become interested parties by entering an appearance at the hearing.

EXPLANATION

Public Hearing procedures were substantially revised. Particular attention should be placed upon the new approach used to determine who is an "interested party" in the proceedings. To become an interested party, one must a) file notice at least three days prior to the hearing of an intent to enter the proceedings or b) enter a formal appearance at the hearing. Designation as an interested party means that the person, municipality, special district, etc., is entitled to written notice of all subsequent hearings and is given the additional right to appear and be heard at the district court's hearings on organization. (See also 89-23-13 in this draft.)

TEXT

EXPLANATION

(3) The hearing held by the board of county commissioners shall be open to the public and a record of proceedings shall be made. All interested parties as defined in subsection (2) of this section shall be afforded an opportunity to be heard under such rules of procedure as may be established by the board of county commissioners. Any testimony or evidence which in the discretion of the board of county commissioners is relevant to the formation of the proposed district may be considered.

(4) Within twenty days after the completion of the hearing, the board of county commissioners shall advise the organizers submitting the service plan and all other interested parties, by first class mail, of its action on the service plan. If the service plan is approved as submitted, a resolution of approval shall be adopted and issued to the organizers. If the service plan is disapproved, the specific detailed reasons shall be set forth in a resolution of disapproval. If the service plan is conditionally approved, the changes or modifications to be made in, or additional information relating to, the service plan, together with the reasons for such changes, modifications, or additional information, shall be set forth in a resolution of conditional approval, and the proceeding shall be continued until such changes, modifications, or additional information are incorporated in the service plan. Upon the incorporation of such changes, modifications, or additional information in the service plan of the proposed district, the board of county commissioners shall adopt and issue a resolution of approval to the organizers.

89-23-6. Scope of authority. (1) The findings of the board of county commissioners shall be based solely upon the service plan and evidence presented at the hearing by the organizers, the planning representative and any interested party.

Essentially the same as 89-18-6 -- Special District Control Act. Also, see the comment next to 89-23-4 above.

TEXT

EXPLANATION

(2) (a) The board of county commissioners shall have the following authority:

(b) To approve without condition or modification the service plan of the proposed special district;

(c) To disapprove the service plan of a proposed special district;

(d) To conditionally approve the service plan of a proposed special district subject to the submission of additional information relating to, or modification of, the proposed service plan.

(3) The findings of the board of county commissioners shall be subject to review as provided in section 89-23-9.

89-23-7. Service plan - grounds for disapproval.

(1) (a) The board of county commissioners shall disapprove a service plan submitted upon satisfactory evidence that:

(b) The existing or projected need for organized service in the area to be included within the proposed district is insufficient to justify creation of the district; or

(c) The existing service in the area to be served by the proposed district is adequate for present and projected needs; or

(d) Adequate facilities, or service are, or will be, available to the area from other municipal corporations or special districts within a reasonable time and on a comparable basis to that proposed by the original service plan; or

(e) The proposed special district is incapable of providing economic and sufficient service to the area within its proposed boundaries; or

(f) The area to be included in the proposed district does not have or will not have the financial ability to discharge the proposed indebtedness on a reasonable basis; or

(g) The facility and service standards of the proposed district are incompatible with the facility and service standards of adjacent municipalities and special districts.

Refers to district court proceedings (hearings) on the district's formation.

Based upon 89-18-7 -- Special District Control Act. Also see the comment next to 89-23-4 above.

TEXT

89-23-8. Municipality or special district to provide services.

(1) In the event the board or boards of county commissioners disapprove the service plan of the proposed district solely on the basis that a municipality or special district which has filed a notice of intent to enter the proceedings and has objected to the formation of the proposed special district can provide such facilities and services within a reasonable time and on a comparable basis, the boards of county commissioners shall request, in writing, such municipality or special district to file a plan of service, within thirty days, indicating the proposed costs of the service and including an agreement to furnish such services within a reasonable time and on a comparable basis to that proposed by the original service plan.

(2) If the plan of service submitted by the municipality or special district would not provide such services and facilities within a reasonable time and on a basis comparable to that provided in the original service plan, or the municipality or special district fails to submit a plan of service, the boards of county commissioners shall reconsider their findings with respect to the service plan submitted by the petitioners. The board of county commissioners shall take such action within ten days following the thirty-day period established in subsection (1) of this section.

(3) If a municipality or special district fails to provide such services and facilities, or make substantial progress toward such end within the time period specified in the plan of service submitted, the boards of county commissioners shall revise their findings accordingly. The board of county commissioners shall take such action within ten days following the period established in the plan of service submitted.

EXPLANATION

New: The committee believes that if a municipality, or an existing special district, successfully blocked the formation of a new district, (by contending that it could provide the services and/or facilities of the proposed special district) language was needed to insure that such services were, indeed, made available and that the area was not made to suffer undue financial hardships or poorer quality services.

TEXT

89-23-9. Jurisdiction of courts. (1) If a board of county commissioners disapprove or conditionally approve a service plan, the organizers may, within thirty days of such decision, commence an action in the appropriate district court for review of the board decision on the grounds that such disapproval was arbitrary or capricious. Upon such review, the transcript of the proceedings before the board shall be furnished at the expense of the organizers. The court may dismiss the action, may recommit the controversy and remand the record in the case to the board for further hearing, or may order the board to enter a resolution of approval if it determines that the disapproval of the board should be set aside.

(2) Upon the issuance by the board or boards of county commissioners of resolutions of approval, a petition shall be filed with the district court for proceedings in accordance with the provisions of section 89-23-10.

89-23-10. Petition for formation. (1) A petition for the formation of a special district shall be filed in the office of the clerk of the district court in the district in which all or the largest part of the real property in the proposed district is situated, accompanied by a favorable resolution or resolutions of the boards of county commissioners of the counties in which the proposed special district lies, pertaining to the service plan of the proposed district.

(2) The petition shall be signed by not less than forty percent or two hundred taxpaying electors as defined in section 89-23-1 (10), of the district, whichever number is the smaller.

(3) (a) The petition shall set forth:

(b) The name of the proposed district;

(c) A general description of the improvements to

EXPLANATION

Section 9 is based on a portion of the procedures outlined in 89-18-9 (1) -- The Special District Control Act. Other requirements in 89-18-9 (1), (2), and (3) are incorporated in other sections -- 89-23-10 in this draft is an example. This section allows for court review of a petition for formation of a district if the organizers believe that the decision of the board of county commissioners was arbitrary or capricious.

This section further incorporates the concept of the Control Act and requires that the petition for formation, once approved by the boards of county commissioners, must also be filed with the district court. The committee believes that the function of the court should be limited to a legal review of the proceedings for formation of a district, rather than evaluating the adequacy of the service plan of the district.

The petition requirements in subsections (2), (3), and (4) are taken from 89-5-4 Water and Sanitation Districts. Section 89-5-4 requires that ten percent or one hundred electors, whichever number is

TEXT

be constructed or installed and the services to be provided for the district;

(d) The preliminary estimated cost of the proposed improvements;

(e) A legal description of the territory to be included in the proposed district;

(f) A prayer for the organization of the district.

(4) No petition with the requisite signatures shall be declared void on account of minor defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file.

89-23-11. Bond of petitioners. At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition a bond shall be filed, with security approved by the court, or a cash deposit made, sufficient to pay all expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the proceeding the court is satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioner to execute or deposit the same, the petition shall be dismissed. The court shall cancel said bond or return such cash deposit immediately upon entry of the order and decree creating the district or upon proof that the expenses have been paid.

EXPLANATION

smaller, must sign a petition. The committee believes that this number is too small and helps encourage formation of districts. The committee also believes that a taxpaying elector qualification on the signing of a petition in subsection (2) might give property taxpayers some control and still meet the constitutional requirements mandated by recent Supreme Court Decisions on elections -- City of Phoenix v. Kolodziejki. (1970).

Essentially the same as 89-5-5, Water and Sanitation District Law.

TEXT

89-23-12. Notice of hearing. Immediately after the filing of such petition, the district court shall fix a place and time, not less than twenty days nor more than forty days after the petition is filed, for hearing thereon. The clerk of said court shall give notice by publication of the pendency of the petition, the purposes and boundaries of the district, and of the time and place of hearing thereon. The clerk shall provide written notice to the board of county commissioners and all other interested parties who appeared at the hearing as provided in section 89-23-5.

89-23-13. Hearing on petition, objection, exclusions - election procedures. (1) Any interested party who appeared pursuant to subsections (2) and (3) of section 89-23-5 and presented objections before the board of county commissioners shall have the right to appear and be heard at the hearing on the court petition for the organization of the district, and the court may dismiss said petition upon a determination that the decision of the board of county commissioners was arbitrary, capricious, or unreasonable.

(2) Upon said hearing, if the court finds that the petition has not been signed and presented in conformity with this article, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceedings. The right to file a subsequent petition for similar improvements or for a similar district, and the right to renew such proceedings is hereby expressly granted and authorized, but no new petition for the creation of such a district embracing the same or substantially the same area shall be submitted again within a twelve-month period after the date of the election at which the proposal was defeated.

EXPLANATION

Based upon 89-5-6 (1) Water and Sanitation District Law.

Section 13 is based in part upon 89-5-7 (1) and (3) Water and Sanitation District Law; 89-18-9 the Special District Control Act; and 89-17-3, C.R.S. 1963, 1965 Supp. -- Re-petitioning for an election.

See 89-5-7 (1). Also 89-17-3, C.R.S. 1963, 1965 Supp., places a similar limitation on re-petitioning for an election.

TEXT

EXPLANATION

(3) At the conclusion of the hearing on the petition for organization, if it shall appear that a petition for the organization of a district has been signed and presented in conformity with this article, and that the allegations of the petition are true, and that the service plan presented has been approved by the board of county commissioners, the court, by order entered of record, shall direct that the question of the organization of the district be submitted to the electors of the district at an election to be held for that purpose, as provided in section 89-25-2.

89-23-14. Certification of election returns.

(1) If the organization of said district is approved at said election, the court shall declare the district organized in the corporate name designated in the petition, by which it shall thereafter be known in all proceedings, describe the territory included therein, designate the types of services to be performed, and designate the first board of directors as elected pursuant to the provisions of section 89-25-2. Thereupon, the district shall be a governmental subdivision of the state of Colorado and a body corporate having perpetual existence with all the powers of a quasi-municipal political subdivision of the state. Immediately upon organization and in September of each year thereafter the district shall file its address, names of its directors, and a geographical description of the territory of the district with the county clerk and recorder and the division of local government.

(2) An order entered establishing a district shall be deemed final and no appeal or writ of error shall lie therefrom. The entry of such order shall finally and conclusively establish the regular organization of the district against all persons except the state of Colorado, in an action in the nature of quo warranto, commenced by the attorney

See 89-5-7 (3).

All specific election procedures have been placed in the proposed draft of a Special District Election Code. Section 14 is based on 89-5-7 (7) and (8).

TEXT

general within thirty days after such decree declaring such district as organized and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in this section.

(3) Except as provided in section 89-23-21, the court in which the petition for the organization of a district has been filed shall thereafter have original and exclusive jurisdiction.

89-23-15. Filing decree. (1) Within thirty days after the district has been created by the court, the clerk of the court shall file with the county clerk and recorder in each of the county or counties within which the district lies, copies of the findings and the decree of the court creating said district. The clerk and recorder in each county shall receive a fee of one dollar for filing and preserving the same. A certified duplicate copy of said decree shall also be filed with the board of county commissioners, the county assessor and the division of local government.

(2) No special district shall levy a tax for the calendar year during which it shall have been organized unless, prior to the first day of July of said year, the assessor and the board of county commissioners of each county within which such district is located shall have been notified of its organization, shall have received from its governing body notice that a tax will be levied for such year, and shall have received, prior to the fifteenth day of October, notice from the property tax administrator of receipt of a map and a legal description of such special district and a copy of the budget of such special district required by the provisions of section 88-1-17, C.R.S. 1963; otherwise, no levy for such year shall be made by the board of county commissioners or certified to the assessor. The county tax assessor may waive the time limit for districts filing the

EXPLANATION

Subsection (1) is based on 89-5-8, Water and Sanitation District Law.

Subsection (2) is based on provisions in the laws governing general property taxes -- 137-1-10 (1), C.R.S. 1963, 1965 and 1967 Supplements. The term property tax administrator is used to conform to the provisions of H.B. 1053, 1970 Session. The committee believes that the last sentence of subsection (2), the waiver, may add flexibility while retaining the basic concept in existing law.

TEXT

EXPLANATION

order and decree after the first day of July, if the tax rolls can be prepared in adequate time.

89-23-16. Board to file oath and bond. Whenever a district has been declared duly organized, the members of the board shall qualify by filing with the division of local government their oaths of office, and individual, schedule, or blanket corporate surety bonds at the expense of the district in an amount not less than one thousand dollars each, conditioned upon the faithful performance of their duties as directors.

89-23-17. Organization of board - compensation - audit removal. (1) The board of directors of a special district shall consist of three members, but if the district provides two or more services, or if the estimated population of the district as determined by the court exceeds three thousand persons, the board of directors of a special district shall consist of five members. Subsequent changes in the membership of the board shall be made in accordance with the provisions of section 89-25-6 (2).

(2) Upon qualification as members, the board shall choose one of its members as chairman of the board and president of the district and shall elect a secretary and a treasurer of the board of the district, who may be members of the board. The secretary and the treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a manner prescribed by the division of local government, a permanent record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate records shall be subject to inspection pursuant to article 2 of chapter 113, C.R.S. 1963.

(3) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the division of local government at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars,

Similar to 89-5-9, C.R.S. 1963, 1969 Supp., Water and Sanitation District Law, and to 89-3-10 and 89-6-10.

Subsection (1) is new. The committee believes that small districts need not have boards of the same size as larger districts.

Subsection (2) based upon 89-5-10 (1), Water and Sanitation District Law. Reference at end of subsection is to Public Records Act.

Subsection (3) was taken directly from 89-5-10 (2), Water and Sanitation District Law.

TEXT

conditioned on the faithful performance of the duties of his office.

(4) (a) Each member of the board may receive as compensation for his service a sum not in excess of six hundred dollars per annum, payable at the rate of twenty-five dollars per meeting. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that provided in this section, and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity. Nothing in this subsection shall preclude any duly qualified board member from receiving a firemen's pension.

(b) A board member may, if authorized by the board, receive additional compensation for services as secretary or treasurer or both.

(5) It shall be the duty of the board of directors to cause audits to be made in accordance with the provisions of article 6 of chapter 88, C.R.S. 1963. It shall be the further duty of the board of directors to publish the financial statement which shall be certified by the person making the audit, or by the governing body, if unaudited, in one issue of a newspaper of general circulation in the district. Such publication shall be no later than thirty days following completion of the audit or report.

(6) The court having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice, and hearing.

89-23-18. Meetings - vacancies. (1) (a) The board shall meet regularly as the business of the district may require and at least semi-annually at a time and in a place to be designated by the board. Special meetings may be held on call of the president or on request of two or more members on notice to each member of the board.

EXPLANATION

Similar to 89-5-10 (3), Water and Sanitation District Law.

The provision that a board member who serves as secretary or treasurer or both may receive additional compensation is new. The committee believes that such a provision is justified since evidence suggested that much of a board's work may be done by the secretary or treasurer. Based, in part, on 89-5-10 (4) Water and Sanitation District Law. Reference is to the 1965 Local Government Audit Law, as amended.

Section 18 is based, in part, on provisions in 89-3-12, 89-5-11, and 89-6-12 -- The Metropolitan District (1947), Water and Sanitation District, and Fire Protection District Laws respectively. Existing law only requires a board to meet regularly (which could be only once a year or even less often). The committee believes

TEXT

EXPLANATION

(b) The board shall also meet within thirty days of receipt of a written notice requesting a meeting, which is addressed to the secretary of the board and which has been signed by at least five electors of the district.

(c) All business of the board shall be conducted only during said regular or special meetings, and, shall be conducted pursuant to article 19 of chapter 3, C.R.S. 1963. A majority of the members of the board shall constitute a quorum at any meeting.

(2) Notice of the time and place of all regular or special meetings shall be mailed at least five days prior to said meeting to the county clerk in each county within which any portion of the district is located. A copy of said notice shall also be posted in one or more public places in the district at least three days prior to said meeting. The county clerk shall be responsible for maintaining a file in his office for informing persons upon request of said meetings.

(3) Any vacancy on the board shall be filled by appointment by the remaining members or member of the board, the appointee to act until the next regular election at which time the vacancy shall be filled by election for any remaining unexpired portion of the term. If the board shall fail, neglect, or refuse to fill any vacancy within sixty days after the same occurs, the court having jurisdiction shall fill such vacancy.

that a minimum of two meetings a year is not unrealistic and added the provisions in paragraph (b) to encourage more frequent meetings.

New: This provision was added by the committee to make it clear that residents of the district could, if needed, demand that the board meet to consider specific problems. The committee believes that this provision might help make boards more responsive to their constituents' needs. The use of a written notice (which requires registered or certified mail) gives those requesting a meeting evidence of their request. Reference in paragraph (c) is to the Open Public Meetings Law.

Section 89-5-11, Water and Sanitation District Law, and similar provisions in other district laws require that, in addition to posting notice in three public places, notice be posted in the county court house. The committee suggests that the provision requiring the county clerk to maintain a file for informing persons of such meetings might make the notice more readily available -- a person could telephone the clerk for information on meetings.

Based on 89-5-11 (3), Water and Sanitation District Law, and similar provisions in other special district laws. Existing law requires vacancies to be filled within thirty days.

TEXT

89-23-19. General powers. (1) The board of a district shall have the following powers:

(2) To have and use a corporate seal.

(3) To sue and be sued, and be a party to suits, actions and proceedings. This provision shall not be construed to be a waiver, expressed or implied, of any immunity from suit which the district may possess by virtue of its being an instrumentality or political subdivision of the state of Colorado.

(4) To enter into contracts and agreements affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, or the state of Colorado, or any agency or political subdivision thereof.

(5) To borrow money and incur indebtedness and other obligations and evidence the same by certificates, notes or debentures, and to issue general obligation or revenue bonds, or any combinations thereof, in accordance with the provisions of this article.

(6) To refund any bonded or other indebtedness of the district without an election in accordance with the provisions of this article.

(7) To acquire, dispose of and encumber real and personal property including, without limitation, rights and interests in property, leases and easements necessary to accomplish the purposes of the district.

(8) To acquire, construct, equip, operate and maintain facilities to accomplish the purposes of the district.

(9) To have the management, control and supervision of all the business affairs and properties of the district.

(10) To hire and retain agents, employees, engineers, attorneys and financial or other consultants.

EXPLANATION

The list of general powers outlined in this section are similar to the powers granted most special districts. See: 89-5-13 -- Water and Sanitation Districts, 89-6-14 -- Fire Protection Districts, 89-3-14 -- Metropolitan Districts (1947 Act). Specific powers granted to particular types of districts have been removed and placed in a separate article. Examples of such specific powers are the powers granted to water and sanitation districts to compel connection to water and sewer lines and enforcement powers granted to fire protection districts. In addition, for purposes of clarification, a district's power to let contracts, and the restrictions thereon, and the authority and duties they have in constructing facilities have been combined into separate sections (20) and (22) of this article. Even though the language of existing law was altered to make these sections general rather than to apply to specific services or powers, the committee believes that the basic concepts in existing law have been retained.

TEXT

EXPLANATION

(11) To have and exercise the powers of eminent domain to take any private property necessary to the exercise of the powers granted, both within and without the district, in the manner provided by law for the condemnation of private property for public use.

(12) To construct, establish, and maintain works and facilities in, across, or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Colorado, and to construct, establish, and maintain works and facilities in, across, or along any stream of water or watercourse.

(13) (a) To provide for the revenues and ad valorem taxes needed to finance the operation, services and facilities of the district, and to pledge such revenues or taxes or both to the payment of the principal of and interest on any indebtedness or other obligation of the district.

(b) In carrying out its duties of providing for the necessary revenues of the district, the board shall determine the amount of ad valorem taxes needed and shall provide for and, as necessary, increase or decrease the rates, tolls, or charges for services or facilities furnished by the district.

(14) To adopt and amend by-laws, not in conflict with the constitution and laws of the state, providing for administration of the district.

(15) To adopt by resolution and to enforce regulations to accomplish the purposes of the district. Such regulations shall be compiled and kept by the secretary so as to be readily available for public inspection.

(16) To accept on behalf of the district real or personal property for the use of the district and to accept gifts and conveyances made to the district upon such terms or conditions as the board may approve.

TEXT

(17) To have and exercise all rights and powers necessary or incidental to or implied from the powers granted in articles 1 and 2 of this chapter.

89-23-20. Contracts of district - requirements. Notice for bids on all construction contracts with private contractors for work or material, or both, involving an expense of five thousand dollars or more shall be given in at least one publication not less than ten days before the deadline for receiving bids in one newspaper of general circulation in the district and by such other means as the board may deem necessary. Written notice in the form for publication shall also be given not less than fifteen days before the deadline for receiving bids, to the board of county commissioners, and each municipality having boundaries within a radius of five miles.

89-23-21. Changes in service plan - requirements - procedure. (1) The facilities, services, and financial arrangements of the district shall conform as far as practicable to the approved service plan.

(2) Any material departure from the service plan as originally approved, or as modified and approved, may be enjoined at any time prior to the date on which contracts are let for all or any substantial part of the departure sought to be enjoined, by the district court approving the formation of such special district, on its own motion, or upon motion of the board of county commissioners from which a resolution of approval is required by this article, or upon the motion of any interested party as defined in section 89-23-5 (2).

(3) (a) Material modifications of the service plan as originally approved may be made by the governing body of such special district by submitting the same to and receiving the approval of the board of

EXPLANATION

Based upon a portion of 89-5-13 (4) -- Water and Sanitation District Law -- and upon similar provisions found in other special district laws. Other parts of 89-5-13 (4) are incorporated into subsection (4) of 89-23-19, above. The notice provision is essentially new. Existing law simply provides that a notice of bids be published. The committee believes that the provisions should be more specific and that certain other entities -- cities and counties -- should definitely be informed of a district's construction plan. Hopefully, this requirement might help prevent duplication of facilities.

Section 21 is based upon 89-18-9 (3) (4), Special District Control Act. Subsections 89-18-9 (3) and (4) do not contain the specific steps outlined in this section, but the committee believes this new wording follows the concepts outlined therein and, in addition, strengthens and clarifies the provisions for initiating and approving any material modification. Specifically, the new language of subsection (2) helps to insure the rights of any interested party to enter the proceedings.

TEXT

EXPLANATION

county commissioners in substantially the same manner as is provided for the approval of an original service plan, except as hereinafter specifically provided.

(b) Such resubmission shall be required only with regard to changes of a basic or essential nature and shall not be required for changes of a type necessary only for the execution of the original service plan.

(4) (a) A request for a resolution of approval of a material modification of a service plan shall be accompanied by a processing fee for such modification procedure in an amount not to exceed one hundred dollars and sufficient copies of the proposed modifications for distribution by the county clerk and recorder.

(b) At the hearing upon said modification of the service plan the board of county commissioners shall hear all testimony and evidence which in their discretion is relevant to the question of whether said approved service plan, if modified as requested, meets the requirements of section 7 for approval of an original service plan.

(c) If the county commissioners determine, based upon the evidence and testimony at said hearing, that said service plan as modified should be approved, they shall adopt a resolution of approval thereof and issue the same to the district board.

(5) (a) Upon the issuance of such a resolution of approval a copy thereof, together with sufficient copies of the approved modifications of the service plan, shall be submitted by the board of directors of the district to the district court having jurisdiction.

(b) If no interested parties, as defined in section 89-23-5 (2) have appeared and objected to such modifications at the hearing before the county commissioners, the court shall, upon receipt of the resolution of approval and copies of the approved modifications, enter an order so modifying the

TEXT

EXPLANATION

original service plan and directing that the same be filed in the same manner as is required by section 89-23-15 (1) for filing of an order creating a district.

(c) If any interested party or parties as defined in section 89-23-5 (2) appeared and objected to such modifications at the hearing before the county commissioners, the court shall, upon receipt of the resolution of approval and copies of the approved modifications, fix a time and place, not less than ten nor more than twenty days after the resolution is filed, for a hearing on such resolution. Mailed notice of such hearing shall be given to the district board, the board of county commissioners and to each such interested party who appeared and objected at the hearing before the county commissioners, and such persons shall be entitled to appear and be heard at such hearing.

(d) The sole issue at said hearing shall be whether the action of the commissioners in adopting and issuing said resolution of approval was arbitrary or capricious. If the court finds that such action was not arbitrary or capricious, it shall enter an order as provided in paragraph (b) of this subsection (5) unless such action requires the furnishing of an additional service or services which requires an election as provided in subsection (6) of this section. If the court finds that such action was arbitrary or capricious, it shall remand said resolution to the board of county commissioners for further proceedings in accordance with the findings and order of the court.

(6) (a) A proposal to provide an additional service, or additional services, shall be made in the manner provided in this section and shall be subject to all procedures specified by this section with the additional requirements set forth in paragraphs (b) and (c) of this subsection (6).

TEXT

EXPLANATION

(b) At such time as proceedings on the proposal to provide additional service or services have been completed to the point where such proposal would be entered by the court as an order modifying the original service plan under the provisions of this section the court shall, in lieu thereof, enter an order directing that the question of whether the district shall furnish the additional service or services proposed be submitted to the electors of the district at an election to be held for that purpose, as provided in article 25 of this chapter.

(c) If the furnishing of the additional service or services as proposed is approved at said election, the court shall then enter its order modifying the original service plan, as authorized in this section.

89-23-22. Construction of facilities - duties.

(1) The board of county commissioners of any county or the governing body of any municipality in which any public streets or highways are situated which are to be cut into or excavated in the construction of any facilities of a district shall have authority to make such reasonable rules as they deem necessary in regard to any such work, and may require the payment of such reasonable fees against the district as may be fixed by them, to insure proper restoration of such streets or highways.

(2) When any such fee is paid by the district, it is the responsibility of the board of county commissioners or the governing body of the municipality to promptly restore such street or highway. If such fee is not fixed or paid, the district shall promptly restore any such street or highway to its former condition as nearly as possible.

(3) In the course of such construction of facilities the district shall not impair the normal use of any street or highway more than is reasonably necessary.

Based directly upon 89-5-13 (11) (a) and (b), Water and Sanitation District Law.

TEXT

89-23-23. Revenues of district - collection.

(1) In any district providing water, and sanitation, storm or sanitary sewerage collection, treatment or disposal, or any combination thereof, all rates, tolls, and charges shall constitute a perpetual lien on and against the property served until paid, and any such lien may be enforced and foreclosed and delinquent amounts collected by certification to the board of county commissioners of the county in which said property is located. The officials of said county shall collect and remit such delinquent amounts to the district in the manner provided by law for the collection of general property taxes. Said officials may attach thereto a charge for the reasonable cost of collecting and remitting the same; but said charge shall not be less than ten dollars for each delinquency

(2) The board may discontinue service for delinquencies in the payment of such rates, tolls, or charges, or in the payment of taxes levied pursuant to this article, and shall prescribe and enforce rules and regulations for the connection with and the disconnection from the facilities of the district.

89-23-24. Mill levy limits. (1) (a) Unless a higher levy is authorized as provided in subsection (2) of this section, the maximum annual mill levy of the district shall not exceed the number of mills specified for each service listed in this section:

(b) Fire protection, not to exceed six mills;

(c) Parks and recreation, excluding library services, not to exceed four mills;

(d) Library services, excluding parks and recreation, not to exceed one and one-half mills;

(e) Cemeteries, not to exceed one mill;

(f) Hospitals, not to exceed two mills for operation and maintenance, but such limitation shall not apply to payment of bonded indebtedness;

(g) For other services, no maximum mill levy limitation.

EXPLANATION

Similar to 89-5-13 (12). The committee believes that the provisions placing a lien against a person's property for non-payment of any rates, tolls, and charges should apply only to water and sanitation districts. Other districts -- recreation, library, cemeteries, solid waste, etc., all may charge users fees which can be collected at the time the service is utilized. The committee also added the provision for assessing a minimum collection charge of \$10 (to reduce the county's burden in meeting collection costs) and added language clarifying whose duty it was to collect the delinquent fees.

Similar to 89-6-15.

Similar to 89-12-15.

Similar to 84-1-15.

Similar to 36-16-5.

Under present law -- 89-14-5 (13), as amended -- hospital districts may levy two mills "for the purposes of the district" (operation and maintenance) and may incur

TEXT

EXPLANATION

(2) If the board shall be of the opinion that a levy in excess of the limitations imposed by this section is necessary to provide for the needs of the district, the board may submit to the electors of the district at a regular or special election the question of whether, for what purpose or purposes, to what extent, and for what length of time the board may exceed the limitations imposed by this section.

(3) Any election called pursuant to this section shall be conducted as a regular or special election under the applicable provisions of article 25 of this chapter.

(4) If a majority of the votes cast at any such election be in favor of the question as it appears on the ballot, the board shall thereby be authorized to adopt a budget for the district which exceeds the amount authorized through application of the limits set forth in subsection (1) of this section by the amount so approved by the vote of the electors of the district. If the majority of the votes cast at any such election shall be against the question as it appears on the ballot, the budget finally adopted shall be restricted to the limits set forth in this section.

bonded indebtedness not to exceed three percent of the total assessed valuation of the district. Rather than include lengthy wording of this nature in this act, the committee believes that the same purpose could be accomplished by exempting bonded indebtedness from the levy limitations. The district must be able to sell its needs to the people and have any bonded indebtedness approved at an election.

New: Based on 123-38-21 -- The Public School Foundation Act of 1969. The committee heard testimony from representatives of many types of special districts that the present mill levy limits prevent a district from operating to its maximum capacity. As a result, the committee proposes that an approach somewhat similar to that adopted in the School Foundation Act be included in special district law. That is, a district could exceed the maximum tax levies established if the district can sell its needs to the voters. Such a proposal must also specify the maximum length of time that the increased levy is to remain in effect.

TEXT

EXPLANATION

89-23-25. Levy and collection of taxes. (1) To provide for the levy and collection of taxes, the board shall determine, in each year, the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy, not to exceed the limits where specified in this article for a given service, which, when levied upon every dollar of assessed valuation of taxable property within the district, and together with other revenues, will raise the amount required by the district annually to supply funds for paying expenses of organization and the costs of construction, operating and maintaining the facilities and equipment of the district, and promptly to pay in full, when due, all interests on and principal of bonds and other obligations of the district, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 89-23-26.

(2) The board may apply a portion of such taxes and other revenues for the purpose of creating a reserve fund, or funds, in such amount as the board may determine, which may be used to meet the obligations of the district, for maintenance, operating expenses, depreciation, and extension of and betterment to the facilities of the district.

(3) The board, not later than the fifteenth day of October of each year, shall certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed in order that, at the time and in the manner required by law for levying taxes, such board of county commissioners shall levy such tax upon the assessed valuation of all taxable property within the district.

Portions of 89-5-15 and 89-5-17, Water and Sanitation District law, are incorporated into this section. The language was changed to clarify general terms and to make the provision applicable to the entire act.

TEXT

EXPLANATION

(4) All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting same, shall constitute, until paid, a perpetual lien on and against the property, and such lien shall be on a parity with the tax lien of other general taxes.

(5) Property taxes provided for in this article shall be levied, assessed, collected, remitted, and accounted for in the manner provided for other general ad valorem taxes, but in no event shall the total levies for given services, including levies to cover deficiencies as provided in section 89-23-26, exceed the limits provided in section 89-23-24, or as authorized by vote.

89-23-26. Levies to cover deficiencies. The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contract, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient punctually to pay the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid.

89-23-27. Inclusion in or exclusion from district - procedures. (1) Proceedings for inclusion in or exclusion from a district shall be in accordance with the provisions of this article, except that territory within a municipality may also be excluded in accordance with article 16 of this chapter.

(2) (a) Proceedings for inclusion in or

Based on 89-5-16, Water and Sanitation Districts.

New: Inclusion and exclusion provisions were combined in sections 27, 28, and 29. Generally, the language in sections 27, 28, and 29 is different from present law but many basic concepts were retained. In brief, the approach suggested here is designed to clarify the procedures that

TEXT

EXPLANATION

exclusion from a district shall be commenced by filing a verified petition with the board of directors of the district, describing the property to be included or excluded and stating the purpose of the petition, and shall be accompanied by a deposit of money sufficient to pay all costs of the proceedings as estimated by the board. Additional deposits may be required from time to time should said original deposit be deemed by the board to be insufficient to pay all such costs.

(b) Such petition for exclusion may be filed by the sole owner or all of the owners of any real property within a district sought to be excluded from the district, and such petition may be granted or denied as provided in this section and section 89-23-28.

(c) Such petition for inclusion within a district may be filed by not less than ten percent or one hundred, whichever number is the smaller, of the owners of any parcel or parcels of real property capable of being served by a district, and such petition may be granted or denied as provided in this section and section 89-23-28.

(d) The filing of a petition shall be deemed assent by each petitioner to the exclusion from or inclusion within said district, as the case may be, of all of said petitioner's property described in said petition, and there shall be no withdrawal from a petition after its consideration by the board of directors.

(3) The secretary of the board shall cause notice of a hearing on such petition to be published in the county in which the property involved or the major portion thereof is located. Such notice shall also be mailed to each municipality or special district having boundaries within a radius of five miles of the district or the area proposed for exclusion from or inclusion in the district. The notice shall describe the property to be included or

are to be followed when land is to be either included or excluded from a district. In addition, the committee added provisions requiring that the effect of any inclusion or exclusion, on the district's original service plan must be considered. That is, a district cannot at random continue to include territory within its boundaries. It must prove that such inclusions would not materially modify its original plan of service. Furthermore, some provisions in existing law granting special exclusion rights to certain types of property were removed. The committee found that such provisions may well be unconstitutional. See: Mountain States Telephone and Telegraph Co. v. Animas Mosquito Control District, 380 P. 2d 560 and Colorado Interstate Gas Company v. Sable Water District, 380 P. 2d 569.

TEXT

EXPLANATION

excluded, the purpose, date, time, and place of the hearing. It shall also notify all persons, municipalities, and special districts that they must file in writing any objections they may have to the granting of such petition prior to or at such hearing and must appear at the time and place designated in said notice in support of such written objections. The failure of any person, municipality or special district to so file and appear shall be taken and shall have the same effect as an assent on their part to the granting of said petition, in whole or in part.

(4) At said hearing and any continuation thereof, all petitioners and all persons having filed written objections and entered an appearance at such hearing shall be interested parties and may present evidence for or against said petition, including but not limited to relevant testimony on the financial and service considerations, of such inclusion or exclusion and on the question of whether such inclusion or exclusion would constitute a material modification of the original service plan of the district, if any, or of the operations of the district if no service plan exists for the district.

(5) (a) Upon completion of said hearing the board shall make the following determinations which shall be final, conclusive, and not subject to review except upon the grounds that the same are arbitrary or capricious;

(b) Whether the petition and all subsequent notices and proceedings comply with all of the requirements of this section;

(c) Whether said petition has been signed by the requisite number of persons having the proper qualifications; and

(d) Whether the granting of said petition, in whole or in part, is in the public interest.

(6) (a) Having made such determinations the board shall, by resolution, grant or deny the petition, in whole or in part, as follows:

TEXT

EXPLANATION

(b) If any of the determinations required by this subsection (5) is in the negative the board shall deny the petition.

(c) If all such determinations required by subsection (5) of this section are in the affirmative, and said petition is one for the exclusion of lands, or is one for the inclusion of lands which has been determined to have been signed by the sole owner or all of the owners of said lands to be included, the board shall, by resolution, grant said petition, in whole or in part as the case may be, and shall file a true and correct copy of its resolution with the clerk of the district court having jurisdiction for further proceedings pursuant to the provisions of section 89-23-28.

(d) If all such determinations required by subsection (5) of this section are in the affirmative and said petition is one for inclusion which has been determined to have been signed by less than all of the owners of the lands to be included, the board shall order the question of including such lands within the district to be submitted at an election to a vote of the electors of the area to be included. Such election shall be held and conducted in the manner provided by article 25 of this chapter. If the inclusion is approved at said election the board shall, by resolution, grant such petition, in whole or in part as the case may be, and shall file a true and correct copy of its resolution with the clerk of the district court having jurisdiction for further proceedings pursuant to the provisions in section 89-23-28.

89-23-28. Court proceedings - inclusion - exclusion. (1) (a) Upon receipt from the board of a district of its resolution granting a petition for inclusion in or exclusion from a district, the court having jurisdiction of the district shall fix a time, not more than twenty days after the filing of the

See the comment next to 89-23-27 above.

TEXT

EXPLANATION

order of the board of directors for a hearing on such order. The clerk shall give written notice of said hearing, mailed not less than ten days prior thereto to the board of directors of the district and all other interested parties who filed objections and entered appearances at the hearing before the board of directors.

(b) At said hearing the court shall hear and consider evidence only upon the question of compliance with section 89-23-27 and, de novo, the question of whether the inclusion or exclusion constitutes a material modification of the service plan of the district, if any, or the operations of the district if no service plan exists for said district.

(c) If the court finds that substantial compliance has been made with the provisions of section 89-23-27, and that no material modification is involved, it shall order the property included within or excluded from the district as the case may be.

(d) If the court finds that substantial compliance has not been made with the provisions of section 89-23-27, it shall remand the matter to the district board for further proceedings in accordance with the findings of the court.

(e) If the court finds that substantial compliance has been made but that a material modification is involved, it shall submit the matter to the board or boards of county commissioners of the county or counties within which the district is located for consideration of the material modification in accordance with the provisions of section 89-23-21 (3). Upon receipt of resolution of approval of such material modification from the board or each of the boards of county commissioners the court shall enter an order of inclusion or exclusion, as the case may be.

(2) Copies of any order including or excluding lands from any district shall be filed in the manner provided in section 89-23-15.

TEXT

EXPLANATION

89-23-29. Effect of inclusion or exclusion. (1) The change of boundaries of the district shall not impair nor affect its organization, nor shall it affect, impair or discharge any contract, obligation, lien, or charge on which it might be liable or chargeable had such change of boundaries not been made.

(2) Real property excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of such exclusion.

(3) From and after the date of its inclusion in such district, such property shall be included upon the tax rolls for the district, shall be subject to all the taxes and charges imposed by the district, and shall be liable for its proportionate share of existing bonded indebtedness of the district; but it shall not be liable for any taxes or charges levied or assessed prior to its inclusion in the district.

(4) The board and the owner or owners of property seeking to be included in a district may enter into an agreement for the inclusion of the property under reasonable and equitable terms and conditions as long as the other requirements of this article are met.

89-23-30. Power to issue revenue bonds - terms. To carry out the purposes of this article, the board is hereby authorized to issue negotiable coupon bonds payable solely from the revenues derived, or to be derived, from the facility or combined facilities of the district. The terms, conditions, and details of said bonds, the procedures related thereto, and the refunding thereof, shall be substantially the same as those provided in article 52 of chapter 139, C.R.S. 1963, relating to water and sewer revenue bonds, except that the purposes for which the same may be issued shall not be so limited. Revenue bonds issued

See the comment next to 89-23-27 above.

New: When the committee examined the laws governing each type of district, they found that, with the specific exception of water and sanitation districts and disposal districts, the law is generally silent as to the specific type of bonds a district may issue. Water and sanitation districts are empowered under 139-52-1 (2) and 89-5-7 (7), C.R.S. 1963, to issue revenue bonds; disposal districts cannot issue any bonds. All other districts are empowered to "issue bonds" but the authorizations do not

TEXT

under this article shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation or other provision. Each bond issued under this article shall recite in substance that said bond, including the interest thereon, is payable solely from the revenues pledged to the payment thereof, and that said bond does not constitute a debt of the district within the meaning of any constitutional or statutory limitations or provisions. Such revenue bonds may be issued to mature at such time or times not exceeding the estimated life of the facility to be acquired with the bond proceeds, as determined by the board, but in no event beyond thirty years from their respective dates.

EXPLANATION

specifically limit the authorization to General Obligation Bonds.

Furthermore, the committee found that under the "special fund doctrine" the courts have ruled that in municipalities and districts where the facilities to be constructed can generate adequate revenues the construction of these facilities through the use of revenue bonds is permissible. The committee also was informed that at least one, or more, recreation districts have issued revenue bonds under this doctrine.

As a result, and because of the belief that revenue bonds place a lesser burden upon district taxpayers, the committee recommends that specific authorization for revenue bonds be included. It should be pointed out that such an authorization does not necessarily allow all districts to sell revenue bonds because not all districts will construct revenue producing facilities.

Section 31 is essentially the same as S.B. 40, 1970 Session.

89-23-31. Power to incur indebtedness - interest - maturity - denominations. (1) To carry out the purposes of this article, the board is hereby authorized to issue general obligation negotiable coupon bonds of the district. Said bonds shall bear interest at a rate or rates such that the net effective interest rate of the issue of said bonds does not exceed the maximum net effective interest rate authorized, and shall be due and payable serially, either annually or semi-annually, commencing not later than three years and extending not more than twenty years from date. The form and terms of said bonds, including provisions for their payment and

TEXT

EXPLANATION

redemption shall be determined by the board. If the board so determines, said bonds may be redeemable prior to maturity upon payment of a premium, not exceeding three percent of the principal thereof. Said bonds shall be executed in the name and on behalf of the district and signed by the chairman of the board with the seal of the district affixed thereto and attested by the secretary of the board. Said bonds shall be issued in such denominations as the board shall determine and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board.

(2) Bonds voted for different purposes by separate propositions submitted at the same or different bond elections may, at the discretion of the board, be combined and issued as a single issue of bonds so long as the security therefor is the same.

89-23-32. Debt question submitted to voters - resolution. (1) Whenever any board shall determine, by resolution, that the interest of said district and the public interest or necessity demand the acquisition, construction, installation, or completion of any work or other improvements or facilities, or the making of any contract to carry out the objects or purposes of said district, requiring the creation of any indebtedness exceeding twenty-five thousand dollars or one and one-half percent of the valuation for assessment of the taxable property in the district in any given fiscal year, whichever is the larger amount, said board shall order the submission of the proposition of incurring such indebtedness to the electors of the district at an election held for that purpose. Such election shall be held and conducted and the results thereof determined in the manner provided in article 25 of this chapter. Any such election may be held separately or may be consolidated and held concurrently with any other election authorized by this article.

Similar to 89-5-24, as amended by S.B. 40, 1970 Session.

TEXT

EXPLANATION

(2) The declaration of public interest or necessity required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the principal amount of the indebtedness to be incurred therefor, and the maximum net effective interest rate to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness.

(3) Whenever the board determines that the district should incur indebtedness in an amount which does not require approval at an election under subsection (1) of this section, it shall establish the maximum net effective interest rate prior to the time such debt is incurred or contracted.

89-23-33. Effect - subsequent elections. If any proposition authorized by section 89-23-33 shall be approved by the electors, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contracts or issue and sell such bonds of the district, as the case may be, all for the purposes and objects provided for in the proposition submitted under this article and in the resolution therefor, and in the amount so provided and at a price or prices and a rate or rates of interest such that the maximum net effective interest rate recited in such resolution is not exceeded. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose, but no new election creating

Section 33 is essentially the same as 89-5-27 as amended by S.B. No. 40, 1970 Session. The committee added specific language providing that no new election may be held for 120 days and only two such elections may be held in any twelve month period.

TEXT

an indebtedness or increasing a district's levy may be held within one-hundred twenty days after the date of the election at which a proposal was defeated. No more than two such elections may be held within any twelve month period.

89-23-34. Correction of faulty notices. In any case where a notice is provided for in this article, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

89-23-35. Early hearings. All cases involving the validity of the organization of a district, or validity of any proceeding under this article which is a matter of immediate public interest and concern, shall be advanced and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this article.

89-23-36. Refunding bonds. Any general obligation bonds issued by any district may be refunded without an election, by the district issuing them, or any successor thereof, in the name of the district which issued the bonds being refunded, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, by the issuance of bonds to refund, pay, and discharge all or any part of such outstanding bonds, including any interest on said bonds in arrears or about to become due, and for the purpose of avoiding or terminating any default in the payment of interest on and principal of said bonds, of reducing interest costs or affecting other economies, or of modifying or eliminating restrictive contractual limitations

EXPLANATION

Similar to 89-5-28, Water and Sanitation District Law.

Similar to 89-5-29, Water and Sanitation District Law. and similar provision in other special district laws.

Similar to 89-5-43, Water and Sanitation District Law, and similar provision in other special district laws.

TEXT

EXPLANATION

appertaining to the issuance of additional bonds or to any system appertaining thereto, or for any combination of the foregoing purposes. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this article for an original issue of bonds.

89-23-37. Limitations upon issuance. No general obligation bonds may be refunded unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds refunded within said period of time. No maturity of any bond refunded may be extended over fifteen years. The interest rate or rates on such refunding bonds shall be determined by the board. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, except to the extent any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

89-23-38. Use of proceeds of refunding bonds. The proceeds of refunding general obligation bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in any state or national bank within the state which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor; provided, to the extent any incidental expenses have been capitalized,

Section 37 is essentially the same as 89-5-44 as amended by S.B. 40, 1970 Session.

Similar to 89-5-45, Water and Sanitation District Law.

TEXT

EXPLANATION

such refunding bond proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be deposited in a reserve therefor, as the board may determine. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in federal securities. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom, to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the board shall exercise a prior redemption option. Any purchaser of any refunding bond issued under sections 89-23-36 to 89-23-38 shall in no manner be responsible for the application of the proceeds thereof by the district or any of its officers, agents, or employees.

89-23-39. Combination of refunding and other bonds. General obligation bonds for refunding and general obligation bonds for any purpose or purposes authorized in this article may be issued separately or issued in combination in one series or more by any district.

89-23-40. Board's determination final. The determination of the board that the limitations under sections 89-23-36 to 89-23-38 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

Similar to 89-5-46.

Similar to 89-5-48.

TEXT

89-23-41. Dissolution of districts. Any special district organized under this article may be dissolved in the manner provided in article 22 of this chapter.

89-23-42. Transition provisions. (1) Special districts commencing organization after the effective date of this article shall be governed by this article and articles 24 and 25 of this chapter, for all purposes.

(2) Existing districts formed under articles being repealed by this article may, by resolution of the board of directors, elect to become subject to the provisions of this article and articles 24 and 25 of this chapter at any date prior to July 1972. Such resolution shall be filed with the district court having jurisdiction over the district, and with the division of local government, and the resolution shall be effective upon the completion of such filings.

(3) Existing special districts not specifically electing to do so earlier shall be subject to the provisions of this article and articles 24 and 25 of this chapter on and after July 1, 1972, and shall hold their next regular election or any special election after such date in accordance with the provisions of article 25.

(4) Districts in the process of being organized when this article becomes effective may continue such formation to completion pursuant to the article and laws under which such organization was commenced, but shall be governed by this article and articles 24 and 25 of this chapter upon the completion of the organization procedures. Any such district may in the alternative complete its organizational proceedings under this article.

(5) Any special district proceedings commenced under any law modified or repealed by this article which are in substantial compliance with this article but have not been completed prior to a district's reorganization, may be completed under prior law at

EXPLANATION

New. Reference is to the 1970 Dissolution Act.

New: This section is designed to provide for the transition from existing law (Chapter 89, C.R.S. 1963) to the provisions contained in this recodification. Additional transitional provisions are contained in 89-25-6 Reorganization of the board.

TEXT

EXPLANATION

the option of the board of directors of the district, the same as if such uncompleted proceedings had been taken pursuant to the provisions of this article.

89-23-43. Saving clause. The repeal of any statute or part of a statute or section or part of a section of any statute, by this act, shall not have the effect to release, extinguish, alter, modify, or change in whole or in part any assets accrued or established or any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such statute, unless the repealing provision of this act shall so expressly provide; and such statute or part of a statute or section or part of a section of a statute so repealed, amended, or revised, shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions, criminal as well as civil, for the enforcement of such penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, order, decree, or action which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions, imposing, inflicting, or declaring such penalty, forfeiture, or liability.

ARTICLE 24

Special Powers and Duties - Water,
Sanitation, Fire District

89-24-1. Additional powers. In addition to the general powers set forth in article 23 of this chapter, the board of a district shall have the specific powers and duties enumerated in this article for services which the district is authorized to provide.

89-24-2. Definitions. (1) In addition to the definitions contained in section 89-23-2, the following definitions are applicable to this article:

(2) The term "paid firemen", shall include all persons engaged in fire fighting or fire prevention, who are full-time permanent and paid employees of fire

The committee concluded that because districts formed to provide water, sanitation, or fire protection are granted special powers not common to all districts a separate article enumerating these powers would help simplify and clarify the law. (See also the comment beside Section 19 of Article 23 of this draft.)

TEXT

EXPLANATION

departments, including but not limited to the following classifications: Fire department chiefs, deputy chiefs, assistant chiefs, district chiefs, battalion chiefs, captains, lieutenants, sergeants, firemen, privates, hosemen, pumpermen, plugmen, laddermen, water towermen, engineers, assistant engineers, stokers of fire engines using steam, electric, or gas and oil motive power; chauffeurs, drivers and assistant drivers of fire engines, hose trucks, hose wagons, hose carriages, ladder trucks, chiefs' automobiles, fuel, repair, and supply apparatus; fire alarm operators, dispatchers, and assistants, linemen who operate fire alarm apparatus, both telegraph and telephone; fire inspection and prevention force; all repairmen of fire apparatus, and squadmen and pilots who are subject to fire fighting and fire prevention duties.

(3) "Retirement benefits" means the firemen's pension fund annuity or pension payments provided in article 50 of chapter 139, C.R.S. 1963.

89-24-3. Water, sanitation - power to compel connection. (1) Districts authorized to provide either water or sanitation services, or both, may compel the owner of any business, dwelling, or other inhabited premises within the district to connect such premises, in accordance with the applicable plumbing code, to the water or sewer line, or to both such lines, if the district board finds such connection necessary for the protection of public health and if the service line or lines of the district are within four hundred feet of the nearest property line of such premises.

(2) Notice to compel such connection shall be given to such owner by registered or certified mail, return receipt requested, to make such connection within twenty days of receipt of such notice, and if such connection is not begun within such period and completed with reasonable diligence by such owner, the

This section is similar to 89-3-15 (1) (b) and 89-3-15 (2) (b), Metropolitan District Act (1947), and a portion of 89-5-13 (12), Water and Sanitation District Law.

The language in existing law (89-5-13 (12)), Water and Sanitation Districts requires only that written notice be made to the owner. The committee believes that the addition of language requiring that

TEXT

board of the district may thereupon make such connection and the district shall, upon completion, have a first and prior lien on the premises for the cost of such connection. Such lien shall be enforced in accordance with the provisions of section 89-23-25 (4).

89-24-4. Water, sanitation - charge for availability. (1) A district authorized to provide either water or sanitation services, or both, may fix, and from time to time increase or decrease, reasonable minimum charges and charges for making available to property within the district either or both of such services or facilities, except property zoned and being used for agricultural purposes. The revenue derived from any such charges for availability of services or facilities shall be applied solely toward the payment of principal and interests of bonded or other indebtedness or revenue bonds of the district, and shall not be used to pay any administration, operation, or maintenance expenses of, or capital improvements within or for the district.

(2) Such charges for availability of services shall not be made against any lot or lot equivalent unless lines for the service or services for which such charge or charges are made are installed and ready for connection within one hundred feet of the nearest property line of the lot or lot equivalent to be charged. What constitutes a "lot" or "lot equivalent" shall be determined by the board of the district in accordance with the custom of the district and area, or portion thereof, taking into consideration all zoning and engineering data available to the district at the time of the determination.

(3) A notice that such charges for availability of services or facilities are being considered, stating the date, time, and place of the meeting at which same are to be considered, shall be mailed to

EXPLANATION

notice be given by registered or certified mail provides the owner with additional protection.

New: This wording provides that property within the district which is located within 100 feet of a water or sewer line, even if it is undeveloped, may be assessed a charge for having such services readily available. This is suggested because such property benefits directly, by having its value increased, when such services are made available.

In 1969 the General Assembly, in H.B. 1460, enacted the concept of levying a charge for making such services available. Such charges, however, could be made only if the valuation for assessment of the district was less than three times the amount of outstanding general obligation indebtedness and the district had a mill levy of not less than ten mills. Testimony presented to the committee suggests that the limits in H.B. 1460 were so narrow as to make the concept unworkable. As a result, the committee recommends the less restrictive language proposed in this section.

TEXT

the owner of each property against which such charge is proposed to be made at his last known address, as disclosed by the tax records of the county or counties within which said district is located. Such owner shall be allowed to appear and be heard at said meeting, or any continuation thereof, on the question of establishing such charges and the amount or amounts thereof.

89-24-5. Water, sanitation - right to sell or lease water. (1) Districts which are authorized to provide water and sanitation services are hereby authorized to sell, lease, or make provision for a succession of uses of any water lawfully derived from water rights owned by them, both inside and outside the boundaries of the district at such rates and upon such conditions as said district may impose.

(2) After the district's operation and maintenance expenses have been met, any revenue derived from the sale or lease of a district's water may be used only for the payment of principal and interest of bonded or other indebtedness or revenue bonds of the district. Fees charged for the sale or lease of water shall never be less than the costs of such services to residents within the district, taxes and fees considered, and shall be applied to the diminution of the rates and taxes charged to residents inside the district. Nothing herein shall be construed to extend, enlarge, impair, or diminish any vested water right.

EXPLANATION

New: This section was added by the committee to: (1) encourage the development, and improve the financing of tertiary (three stage) water treatment plants; and (2) to encourage recycling and reuse of Colorado's limited water resources. The need for reuse of such water was recognized by the General Assembly in S.B. 81, 1969 Session -- the "Water Right Determination Act of 1969" (now cited as 148-2-6, C.R.S. 1963, as amended). This act states:

Whenever an appropriator has heretofore, or shall hereafter lawfully introduce foreign water into a stream system, such appropriator may make a succession of uses of such water by exchange or otherwise to the extent that its volume can be distinguished from the volume of the streams into which it is introduced. Nothing herein shall be construed to impair or diminish any water right which has become vested.

It must be pointed out that this authori-

TEXT

89-24-6. Duties and responsibilities of fire protection districts. (1) (a) It shall be the duty of the chiefs of the various fire departments of the special districts providing fire protection to enforce all laws and ordinances of the state, and the several political subdivisions thereof, relating to the following:

(b) The prevention of fires;

(c) The storage, sale and use of combustibles and explosives, including fireworks;

(d) The keeping, storage, use, manufacture, sale, handling, transportation, or other disposition of highly inflammable materials and rubbish, gun powder, dynamite, crude petroleum, or any of its products, explosive or inflammable liquids or compounds, tablets, torpedoes, or any explosives of a like nature, or any other explosive, including fireworks and firecrackers, and the fire chief may prescribe the materials and construction of receptacles to be used for the storage of any of the above enumerated items; but enforcement shall not extend to the production, transportation, or storage of inflammable liquids as regulated by chapters 92 and 100, C.R.S. 1963.

(e) The suppression of arson and the investigation of the cause, origin, and circumstances of fires.

(2) (a) The chiefs of all special district fire departments shall inspect, or cause to be inspected by members or officers of his department, as often as he shall deem necessary, all buildings, premises, and public places, for the purpose of ascertaining and causing to be corrected any condition liable to cause

EXPLANATION

zation applies only to water rights owned by the district and such reuse cannot be made of any water in which others have a vested right.

Sections 6 to 9 of this article reorganize the existing law governing powers and duties of fire protection districts. It is believed that nothing was deleted from these sections; they were simply reorganized under four major headings. For purposes of comparison see 89-6-36 through 89-6-42, C.R.S. 1963, and 89-6-2, 89-6-14 and 89-6-46, C.R.S. 1963, 1969 Supplement.

Reference is to the laws governing coal mines (Chapter 92) and the laws governing the control and regulation of liquified petroleum gas.

TEXT

EXPLANATION

fire, or obtaining information relative to the violation of the various provisions affecting the fire hazard. Individuals conducting such inspection shall carry on his person properly authorized fire department identification which shall be shown, on request, to the owner, lessee, agent, or occupant of any structure prior to the inspection of the same.

(b) (i) Inspection practices shall include all of the following:

(ii) To inspect all buildings and enclosures, to see that proper receptacles for ashes are provided, to cause all rubbish or other inflammable material to be properly removed or disposed of, and make such suggestions and issue such orders to the owners or occupants of buildings as will, in the opinion of such inspecting officer, render the same safe from fire;

(iii) To inspect the surroundings of boilers and other heating apparatus in any building to ascertain whether all woodwork is properly protected and that no rubbish or combustible material is allowed to accumulate;

(iv) To inspect fire escapes and stairways and cause the removal of all obstructions therefrom, and to inspect all places where explosives or inflammable compounds are sold or stored;

(v) To inspect the construction, placing, repair, and control of all fire escapes, standpipes, pressure tanks, fire doors, fire shutters, fire lines, fire hose, sprinkling systems, exit lights, exit signs, and the installing and testing of fire equipment in all buildings and places requiring the same, and the providing of means for escape or protection against loss of life and property from fire in the same.

89-24-7. Powers and authority of fire protection districts. (1) The chiefs of special district fire departments or fire department members designated by such officers, shall have the authority to enter into all such structures and upon all such premises within

TEXT

EXPLANATION

their respective jurisdictions except the interior of a private dwelling, at reasonable times during business hours or such times as such structures or premises are open for the purpose of examination of all such structures or premises in conformity with the duties imposed under this article, and it shall be unlawful for any person to interfere with the chief of any fire department, or any member of such fire department designated by the chief, to conduct an inspection, in the discharge of his duties, or to hinder or prevent him from entering into or upon, or from inspecting any buildings, establishments, enclosures, or premises in the discharge of his duties.

(2) Whenever any special district fire chief, or any designated member of a special district fire department, shall find, through inspection procedures as outlined in subsection (3), any building or other structure which, for want of repair, lack of or insufficient fire escapes, automatic or other fire alarm apparatus, or fire extinguishing equipment as may be required by law, or for reasons of age or dilapidated condition, or from any other cause, is especially liable to fire or hazardous to the safety of the occupants thereof, and which is so situated as to endanger other property, and whenever such officer shall find in any building, combustible or explosive matter or inflammable conditions, dangerous to the safety of such building or its occupants, he or they shall order the same to be removed or remedied, and such order shall forthwith be complied with by the owner, lessee, agent, or occupant of such premises or buildings; provided, that any such owner, lessee, agent, or occupant who feels himself aggrieved by any such order, may, within five days after the making of any such order by the chief of a fire department, file his petition with the district court of the county in which such premises or building is located, praying

TEXT

EXPLANATION

for a review of such order, and it shall be the duty of such court to hear the same at the first convenient day, and to make such order in the premises as right and justice may require, and such decision shall be final.

(3) The chiefs of all special district fire departments shall investigate the cause, origin, and circumstances of every fire occurring within their jurisdiction by which property is destroyed or damaged, and so far as is possible, determine whether the fire was the result of carelessness or design. Such investigation shall be begun immediately upon the occurrence of such fire by the chief in whose jurisdiction such fire has occurred, and if after such investigation, the chief is of the opinion that the facts in relation to such fire indicate that a crime has been committed, he shall present the facts of such investigation, the testimony taken from any person involved, together with any other data in his possession to the district attorney of the proper county, with his request that the district attorney institute such criminal proceedings as such investigation, testimony, or data may warrant, and it shall be the duty of such district attorney upon such request, to assist in further investigation as may be required.

89-24-8. Crimes - penalties. (1) (a) Within any district organized to provide fire protection services, it shall be unlawful for any person:

(b) To willfully or maliciously give, make, or cause to be given or made a false alarm of fire, whether by the use of a fire alarm box, telephone call, or otherwise;

(c) To willfully or maliciously disconnect, cut, or sever any wire of a fire alarm system or in any manner tamper with any part of such communication system;

TEXT

EXPLANATION

(d) To knowingly aid, abet, permit, or participate in the commission of an act prohibited by this section.

(2) Any owner, lessee, agent, or occupant of any building or premises knowingly maintaining any condition likely to cause fire or to constitute an additional fire hazard, or any condition which impedes or prevents the egress of persons from such building or premises, shall be deemed to be maintaining a fire hazard. Each day in which such violation occurs shall constitute a separate violation.

(3) The provisions of this section shall not limit the power of municipalities to enact ordinances covering the same or similar subject matter, but no person acquitted of, convicted of, or pleading guilty of a violation of a municipal ordinance shall be charged or tried under this section for the same or similar offense, and no person acquitted of, convicted of, or pleading guilty to a violation of this section shall be charged or tried under a municipal ordinance for the same or similar offense.

(4) Any person who violates any provision of sections 89-24-7 or 89-24-8, is guilty of a misdemeanor and upon conviction thereof shall be punished, for each offense, by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine or imprisonment.

89-24-9. Civil service system - fire districts.

(1) In its discretion, the board of a district organized to provide fire protection may establish a system of civil service in the district to cover its paid employees who are directly employed by the district as full-time paid firemen; but such system shall not cover employees of a fire department that renders fire protection service to the district under contract; and the question of establishing such a system of civil service shall be submitted at any regular election of the district or at a special election and shall not become effective unless approved by the electors of the district. In establishing such a system of civil service, the board

TEXT

EXPLANATION

may provide for the exclusion of supervisory and administrative personnel from the system.

(2) (a) The board of any fire protection district establishing a system of civil service for its paid employees, may appoint three electors residing in the district to serve as a civil service committee, hereinafter referred to as the "committee". Of those initially appointed, one member of the committee shall be appointed for a term of two years, one for four years, and one for six years; thereafter, each member shall be appointed for a term of six years. Any member may be appointed to succeed himself. No paid fireman employed by the district may be a member of the committee. The members of the committee shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the discharge of their duties.

(b) The members of the committee shall elect from among its members a president. The secretary of the board shall serve as the secretary of the committee, but shall have no vote on the committee. The secretary shall keep a record of the minutes of all proceedings of the committee in a bound book separate and apart from the records of the board. The secretary is the only member of the board who may be a member of the said committee.

(c) Any member of the committee may be discharged by the board for cause, but only after affording such member the right to a public hearing at which he may be represented by counsel. Vacancies in office on the committee shall be filled by the board for the remainder of the unexpired term.

(d) The attorney for the board shall act as legal advisor to the committee, but at all hearings before the committee involving a fireman, such fireman may be represented by counsel.

(3) (a) The committee shall:

(b) Establish standards for employment and

TEXT

EXPLANATION

termination of employment including minimum conditions of employment for applicants for appointment and promotion, which shall assure that such applicants shall be of good moral character, and physically, mentally, and emotionally capable of performing arduous duties, twenty-one years of age and older, graduates of a high school or the equivalent thereof, citizens of the United States, and residents of the state of Colorado.

(c) Recruit applicants for employment; formulate and hold competitive examinations, or cause the same to be done, in order to determine the relative qualifications of persons seeking employment in any class or position as a fireman; and formulate and hold promotional examinations for firemen within the fire department of the district, or cause the same to be done.

(d) As a result of such examinations, certify to the board lists of qualified applicants for the various classes of positions who successfully completed such examinations.

(e) Determine that any examination held pursuant to paragraph (c) or (d) of this subsection (2) is practical and consists only of subjects which will fairly determine the capacity of persons examined to perform duties of the position sought, including, but not limited to, tests of physical fitness and manual skill.

(f) When a vacant position is to be filled, to certify to the board, upon written request of the board, the name of the three persons highest on the eligible list for that position or the applicable classification; but if less than three persons are on such list, then all the names shall be certified to the board. If there are no such lists, the committee shall authorize provisional or temporary appointment lists for such position or applicable classification.

TEXT

EXPLANATION

(4) The committee may, from time to time, make, amend, and repeal rules and regulations necessary to administer the provisions of this section.

(5) Disciplinary action against any fireman may be instituted by the chief of the fire protection district and a hearing thereon, after reasonable notice, shall be afforded to the fireman concerned, at which hearing he may be represented by counsel of his choice and at his expense. Such hearings shall be conducted in the same manner, insofar as possible, as provided in section 3-16-4, C.R.S. 1963, as amended. Any fireman aggrieved by the decision of the board may obtain review thereof by appeal to the committee, and on such review he may be represented by counsel of his choice and at his expense.

(6) The committee shall hear all complaints involving alleged injustice, wrongful discharge, and other violations of the rules and regulations of the committee, and shall hear all appeals from decisions of the board on disciplinary actions pursuant to subsection (4) of this section. All such hearings shall be conducted in the same manner, insofar as possible, as provided in section 3-16-4, C.R.S. 1963, as amended. The decision of the committee shall be final and shall not be set aside except by the committee or by a court of competent jurisdiction. Judicial review of any decision of the committee may be had in the same manner as prescribed in section 3-16-5, C.R.S. 1963, as amended.

(7) The board, if requested by the committee, may contract with any municipal or state agency for the purpose of conducting examinations for original appointment or for promotion, or for any other purpose in connection with the selection or administration of personnel.

TEXT

EXPLANATION

(8) The firemen of any fire protection district, in good standing at the time of the establishment of said civil service system, shall continue in their employment and rank, and shall be automatically included in the civil service system, and shall be promoted or discharged in accordance with the provisions of the civil service rules and regulations, except that the office of fire chief shall be excluded from such civil service system by decision of the board. The board shall make provision for tenure of the fire chief and the committee shall implement the same by appropriate rules and regulations.

(9) Any district which has established a system of civil service for its paid employees pursuant to this section shall not terminate the same unless the question of such termination shall be submitted at an election held for the purpose and shall be approved in the manner provided for authorization of indebtedness.

(10) The board shall by resolution appropriate annually to the committee sufficient funds to administer the provisions of this section.

(11) In the event any county assumes county-wide responsibility for fire protection or any board of county commissioners becomes the board of directors of a fire protection district and adopts a county-wide merit, civil, or career service system, any civil service system established under the provision of this section shall be dissolved and merged with such county-wide system, including all employees' benefits, rights, liabilities, and duties accrued or incurred under this section, and the same shall be continued following such merger.

TEXT

ARTICLE 25

Special District Elections

89-25-1. Definitions. (1) In addition to the definitions contained in section 89-23-2, the following definitions are applicable to this article:

(2) "Population" means the population within the district as estimated by the court or the board of directors of the district as the case may be. For regular elections, population estimates must be completed at least ninety days prior to the date of election and said estimate shall be used for special elections.

(3) "Election official" means any board member, secretary of the board, judge of election or representative of a governing body contracting for the performance of election duties.

(4) "Watcher" means a person whose name has been submitted to the county clerk of the county in which his election precinct is located and who has been certified by such county clerk as an elector of the district.

(5) "Poll book" means the list of voters to whom ballots are delivered or who are permitted to enter a voting machine booth for the purpose of casting their votes at a regular or special election.

EXPLANATION

The Municipal Election Law defines population to be that determined by "the latest federal decennial census." It was believed that use of census data would be impossible in special districts because their boundaries would usually overlap or include only portions of census tracts. As a result, the committee recommends placing responsibility for population estimates with the board.

Taken in part from 49-25-2 (6) -- Municipal Election Law. Basically, the language of the Municipal Law was rewritten to be made applicable to special districts.

Excerpted from 123-31-2 (8) -- the School District Election Law. 123-31-2 (8) also includes provisions outlining the duties, responsibilities and prerogatives of a watcher. Similar provisions are contained in Section 17 of this article.

Taken from 49-25-2 (17) -- The Municipal Election Law. Specific administrative requirements that names be entered in the poll book in the order in which ballots are delivered (or the voters enter the voting machine) -- were deleted. The committee believes that such procedures could be eliminated to help simplify the language of the draft.

TEXT

(6) (a) (i) An "elector" of a district, within the meaning of this article, is a person who at the designated time or event is qualified to vote in general elections in this state and:

(ii) Who has been a resident of the district or the area to be included in the district for not less than thirty-two days; or

(iii) Who or whose spouse owns taxable real or personal property within the district or the area to be included in the district, whether said person resides within the district or not.

(b) A person who is obligated to pay general taxes under a contract to purchase real property within the district shall be considered an owner within the meaning of this subsection (5).

(7) Calendar days shall be used in all computations of time made under the provisions of this article. In computing time for any act to be done before an election, the first day shall be included and the last, or election day, shall be excluded. Saturdays, Sundays, and legal holidays shall be included, but if the time for any act to be done shall fall on a Saturday, Sunday, or a legal holiday, such act may properly be done upon the next following business day.

89-25-2. Organizational election - new district - conduct. (1) After the court has approved the organization of a new district pursuant to section 89-23-14, the court shall order that the question of the organization of the district be submitted to the electors of the district at an election to be held for

EXPLANATION

Original Source: 89-17-8, C.R.S. 1963, as amended by S.B. 40, 1970 Session. Section 5 was altered to comply with the United States Supreme Court decision in City of Phoenix v. Kolodziejski (1970). The definition of taxpaying elector was retained to allow the inclusion of, in Article 23, the provision that petitions for organization of a new district must be signed by such electors -- property taxpayers.

H.B. 1016, 1970 Session, established a uniform 32 day residency requirement.

Taken directly from 49-25-4 of the Municipal Election Law. The term "Saturday" was added to clarify days on which business may be conducted. Including Saturdays meets the approach used in Colorado's Rules of Civil Procedure.

Original Source: 89-5-7 (3) -- Water and Sanitation Districts. References to taxpaying qualifications in the present law are not contained in this section pursuant to committee recommendations defining

TEXT

that purpose. Such order shall also designate three electors of the district as judges of said election and the clerk of court or another elector of the district, to receive applications for and to disburse and collect absentee ballots. The clerk of the court shall give notice by publication of the date, time, and place of said election and the place where absentee ballots can be obtained. Said election shall be held not less than eighteen days after the first publication of said notice. Said notice shall state the purposes, estimated costs, and boundaries of the district.

(2) Such election shall be held and conducted, except as herein specifically provided, in the same manner as other elections provided for in this article. The election judges shall require the execution of an affidavit concerning the qualifications of all electors.

(3) (a) (i) At such election the voter shall vote for or against the organization of the district, and for three or five electors as the case may be, who shall constitute the board of directors of the district, if organized. Said directors' terms of office shall be as follows:

(ii) In the case of a three-member board, one director shall serve until he or his successor is elected and qualified at the next regular election and two shall serve until they or their successors are elected and qualified at the second regular election thereafter.

(iii) In the case of a five-member board, two directors shall serve until they or their successors

EXPLANATION

elector. The terminology of existing law was altered (changing the term "biennial election" to "regular election" is an example) to fit the context of the proposed recodification. However, the committee has attempted to clarify and simplify procedures without altering the original concept in 89-5-7 (3), except that existing law allows "not less than twenty days". The twenty day provision was changed to eighteen days to help speed up the election process. It was suggested that eighteen days would not interfere with the publication requirements and it might allow elections to be held prior to intervening weekends or holidays which could result in reduced voter interest.

Taken directly from 89-5-7 (4) -- Water and Sanitation District Law -- but altered to fit the context of this act.

Original source of subsections (3) through (5) was 89-5-7 (5) to 89-5-7 (7) -- Water and Sanitation District Law. This portion was substantially re-written for clarity but the content was not greatly changed. And, of course, changes were made to reflect the proposed change to boards with either three or five members. (See also 89-23-17 in this draft.).

TEXT

are elected and qualified at the next regular election and three shall serve until they or their successors are elected and qualified at the second regular election thereafter.

(4) (a) A nomination for director to serve for either term may be made by written petition signed by not less than five electors, regardless of whether or not nominated therein, filed with the district court having jurisdiction not less than fifteen days prior to the date of said election. Any petition so filed shall designate therein the name of each nominee and the term for which nominated, and shall recite that the subscribers thereto and the nominee or nominees designated therein are electors of the proposed district. No petition shall designate any qualified person as a candidate for more than one term of office, nor shall it place in nomination more than the number of offices to be filled, nor shall it designate more than one nominee for each office to be filled. No elector shall nominate more than one person for any term.

(b) The name of each nominee so designated shall appear on the organizational ballot, and space shall be provided thereon for writing in the name of a candidate for each office. No person's name shall appear on the ballot more than once, and if he is nominated by petitions for offices having different terms, his name shall appear only as a candidate for the longer term so designated.

(5) The judges of election shall certify the returns of the election to the district court. If a majority of the votes cast at said election are in favor of the organization, the district court shall proceed with the order establishing the district as provided in section 89-23-14.

EXPLANATION

The fifteen-day requirement was adopted by the committee to give the organizers time to prepare and print ballots and to complete election preparations. Existing law -- 89-5-7 (6) allows for a ten-day intervening period.

TEXT

89-25-3. Board of directors of district to conduct elections. (1) After a district is organized and the first board of directors is elected, the board shall govern the conduct of all subsequent regular and special elections of the district and shall render all interpretations and make all decisions as to controversies or other matters arising in the conduct of such elections.

(2) All powers and authority granted to the board by this article for the conduct of regular elections may be exercised by the secretary in the absence of the board, and, for special elections, upon authorization by the board.

89-25-4. No registration required. Registration shall not be required for regular or special elections under this article. Any person requesting to vote shall sign an affidavit as required in section 89-25-19 before being allowed to vote.

89-25-5. Directors - number - election - term.
(1) The regular district election in each district shall be held on the first Tuesday following the first Monday in May of each even-numbered year. Whenever the date of such election is identical to the date set for a municipal election in any municipality having boundaries coterminous with such district, such election may be combined with and held in conjunction with such municipal election.

EXPLANATION

Original Source: 123-31-3 (1) -- School District Election Law and 49-25-5 (2) -- Municipal Election Law.

Subsection (1) is essentially the same as 123-31-3 with the references changed to apply to special districts.

The Municipal Election Law -- 49-25-5 (1) -- empowers the city or town clerk to "render all interpretations, ..." and in 49-25-5 (2) it allows the deputy clerk to perform the same duties in the absence of the clerk. This concept is used in (2) which allows the secretary to assume board functions in the absence of the board.

Under 89-5-2 (6) -- Water and Sanitation Districts -- no registration is required for elections in such a district, but election officials may require that an affidavit be signed as evidence a person qualifies as a "taxpaying" elector. Of course, by recent Supreme Court decisions, elections cannot be limited to taxpaying electors.

Portions of this section (5) were taken from the School District Election Law 123-31-5. The uniform election date -- the first Tuesday following the first Monday in May -- was adopted for a number of reasons. For example, opinion generally held that elections held in November could result in a situation where district contests were over-shadowed by general elections.

TEXT

EXPLANATION

(2) In each district there shall be elected three or five directors, the number having been established in accordance with the provisions of section 89-23-17.

(3) The basic term of office for district directors, after the original terms provided for as part of the organizational election, shall be four years.

(4) In those districts organized under article 23 of this chapter and having three directors pursuant to section 89-23-17, one director shall be elected for a four year term at the first regular election held after the district becomes organized and every four years thereafter, and two directors shall be elected for four year terms at the second regular election after the district becomes organized and every four years thereafter.

(5) In those districts organized under article 23 of this chapter and having five directors pursuant to section 89-23-17, two directors shall be elected for a four year term at the first regular election held after the district becomes organized and every four years thereafter, and three directors shall be elected for four year terms at the second regular election after the district becomes organized and every four years thereafter.

Other dates might interfere with a district's budget process, with municipal or school elections, or be set at a time which might result in a small number of persons voting -- summer months and vacations for example. Under present law different types of special districts hold elections at various dates. For example, fire and hospital districts hold elections on the second Tuesday in August of the second calendar year after they are organized (and every two years thereafter); Metropolitan Recreation Districts -- the first Tuesday in June on the second year after organization (and every two years thereafter); Domestic Waterworks -- the first Monday after the first Tuesday in June - every two years; and Metropolitan districts the second Tuesday in January in the second calendar year (and every two years thereafter). Other district's election dates also vary.

Under existing laws, most district boards consist of five members elected for six year terms. Specifically excepted are Domestic Waterworks districts (both in unincorporated areas and in areas of over 10,000 population) who elect three-member boards and Metropolitan Recreation Districts who elect their five-member boards for four-year terms. Generally, the committee believes that shorter terms would help make boards more responsive to the needs of the people they serve and that some small districts could operate more efficiently with boards of three members. In addition, testimony indicated

TEXT

EXPLANATION

89-25-6. Reorganization of board - election - compliance. (1) (a) (i) The terms of office for all existing directors shall terminate following the regular election held in May of 1974. Said offices shall expire as of the date that newly elected members of the board of directors, elected at the reorganizational election, have subscribed to the oath of office required in section 89-25-44. Said election shall be held as follows:

(ii) Prior to the regular election in May of 1974, the board of each existing district shall provide for a reorganization election of the board of directors to be held at the time of the regular election in said year and, by resolution, determine the number of directors to be elected at said election pursuant to the provisions of section 89-23-17.

(iii) Said elections shall be held at the same time and in the same manner as regular elections under this article.

(iv) In those districts reorganizing under this article which are required to have three directors, one director shall be elected for a two year term at the reorganization election and every four years thereafter, and two directors shall be elected for four year terms and every four years thereafter.

(v) In those districts reorganizing under this article which are required to have five directors, two directors shall be elected for terms of two years at the reorganizational election and every four years thereafter, and three directors shall be elected for terms of four years and every four years thereafter.

(2) After the reorganization elections held in May of 1972, in any district in which the number of directors must change as a result of the provisions of section 89-23-17 (1), the board shall declare such change by resolution, and election of directors at the

that there is a high resignation rate among boards having six-year terms.

Section 6 is new. This section is designed to accomplish the transition (reorganization) from six-year terms of office to four and, in some instances, from five-member boards to three.

The committee discussed several approaches to this reorganization. One approach would allow all members to finish their elected terms of office. Such an approach could, in districts which did not come under this act until July 1972, result in final reorganization occurring in 1978. In short, the committee believes that the most reasonable approach is to require reorganization in 1974. This gives districts essentially a three-year period to prepare for reorganization and may encourage a district to elect to come under the act and reorganize prior to the regular election in May of 1974. In any event, it will require shortening the term of some elected officers.

TEXT

next following regular election shall be in accordance with the provisions for reorganizing a district contained in this section.

(3) Districts which are in the process of being organized at the time of the adoption of this act, evidenced by their having filed a petition for organization with the district court, may continue their organization under prior laws but shall, immediately upon formation, be governed by this article. If the board's organizational election was held under prior law the terms of office of the boards of directors of the district shall expire at the next regular election following organization, but not later than the regular election in May of 1972, and an election shall be held to reorganize the board in accordance with the provisions of this article.

(4) Any district which, by resolution of the board, elects to come under the provisions of articles 23, 24, and 25 of this chapter after July 1, 1971 and prior to May, 1972, as provided for in section 89-23-43 (2), may do so and the district shall hold its reorganizational election at the regular election in May of 1972.

89-25-7. Notice of election. The secretary shall give notice by publication of the regular or special election, which shall be held not less than eighteen days after the first publication of said notice, specifying the day and polling places of such election, the boundaries of election precincts, the time during which the polls shall be open, the offices and questions to be voted on, the names of all candidates who have been nominated, and the qualifications for an elector to vote at said election.

EXPLANATION

Based upon School District Election Law -- 123-31-13. A definition of "publication" is found in 89-23-2 (5) of this draft.

TEXT

EXPLANATION

89-25-8. Copies of election laws and manual provided. At least one hundred twenty days before any regular election the secretary of state shall prepare and transmit a sufficient number of copies of the district election laws of the state and of a simplified manual of election procedures to the secretary to be distributed to the judges of election in each district election precinct. The secretary and each set of judges shall receive one copy of the district election laws and the secretary and each judge shall receive at least one copy of the simplified manual.

89-25-9. Qualifications and nomination of candidates for district director. (1) Any candidate for the office of director of a district shall be an elector of such district.

(2) A nomination for director to serve for any designated vacancy may be made by written petition signed by not less than any five electors, regardless of whether or not nominated therein, filed with the board not less than eighteen days prior to the date of said election. Any petition so filed shall designate therein the name of each nominee and the term for which nominated, and shall recite that the subscribers thereto and the nominee or nominees designated therein are electors of the district. At the time of filing of the petition, the nominee must give consent to serve the term designated in the petition. No petition shall designate any qualified person as a candidate for more than one vacancy, nor shall it place in nomination more than the number of offices to be filled, nor shall it designate more than one nominee for any of the vacancies. No elector shall nominate more than one person for any vacancy. The name of each nominee so designated shall appear on the ballot, but space shall be provided thereon for writing in the name of a candidate for each vacancy.

Original Source: Municipal Election Law -- 49-25-7. That law requires that the election laws and manual be provided at least thirty days prior to the election. The committee recommends 120 days to assure ample time for a district to become familiar with the law and to assure that the laws and manuals would be available prior to the election. The committee believes that this will not place additional burdens on the Office of the Secretary of State.

Provisions from both 123-31-7 -- School District Election Law -- and 89-5-7 (6) -- Water and Sanitation District Law -- were incorporated into this section. That is, subsection (1) is from 123-31-7 and subsection (2) is derived from 89-5-7 (6).

TEXT

No person's name shall appear on the ballot more than once, and if he is nominated by petitions as a candidate for more than one term, his name shall appear only as a candidate for the longest term so designated.

89-25-10. Objections to nominations. All petitions of nomination which are in apparent conformity with the provisions of section 89-25-9, as determined by the secretary, shall be deemed to be valid unless objection thereto shall be duly made in writing within three days after the filing of the same. In case objection is made, notice thereof shall be forthwith mailed to any candidate who may be affected thereby. The secretary shall pass upon the validity of all objections, and eligibility of all candidates whether of form or substance, and his decisions upon all such matters of form shall be final, subject to judicial review.

89-25-11. Judges of election. (1) Prior to the date of a regular or special election, the board shall appoint three or, in their discretion, four election judges for each of the election precincts.

(2) In case one or more election judge shall be absent at the time and place stated in the notice for the opening of the polls and ballot boxes, one or more electors of the precinct shall be chosen by voice vote of the electors present to fill the vacancies. The person so chosen shall have all the powers and perform all the duties prescribed for an election judge.

(3) The secretary shall make and file in his office a list of all persons so appointed, giving their names and addresses.

89-25-12. Oath of judges - compensation. (1) The secretary shall provide a blank form of oath to be taken by each of the judges of election, substantially as follows:

"I, _____, do solemnly swear to (or affirm) that I am a citizen of

EXPLANATION

Original Source: Municipal Election Law -- 49-25-24. Lengthy procedural provisions on review in the municipal law were removed and simple reference to "judicial review" was inserted in lieu thereof. Such procedures already exist within both the court system and statutory law; e.g., the Rules of Civil Procedure.

Subsections (1) and (2) based upon the School District Election Law -- 123-31-12.

Subsection (3) excerpted from the Municipal Election Law -- 49-25-30. The provision in 49-25-30 that the list of judges shall be a public record was removed because this act states that all district records are public and subject to the Open Public Records Law. Based directly upon the School District Election Law 123-31-12 (3) (a) and (b).

TEXT

EXPLANATION

the United States and the state of Colorado; that I am an elector in the _____ district; that I will perform the duties of judge of election according to law, and to the best of my ability; that I will endeavor to prevent fraud, deceit, and abuse in conducting same; that I will not disclose how any elector voted if, in the discharge of my duties such knowledge comes to me, unless required to do so in some court of competent jurisdiction, and that I will not disclose the result of the votes until the polls have closed, so help me God.

Subscribed and sworn to before me this _____ day of _____, _____.

Judge of Election"

(2) The said oath shall be taken and subscribed by each of the judges of election before any votes shall be received. Any of the judges of election shall have the power and authority to administer said oath.

(3) The board of directors may determine the amount of compensation, not to exceed twenty-five dollars, to be paid to judges of election for their services at any election.

89-25-13. Precincts and polling places. (1) The board of directors, not less than twenty-five days prior to the time of the holding of any election, shall establish one or more election precincts in the district. Such action shall include the establishment of at least one precinct for each three thousand electors of the district as determined by the board, and the board shall designate one polling place in each precinct; provided, that where an event beyond the control of the board makes it imperative the board may at any time before the day of election change the location of the polling place in the election

The language is similar to the School District Election Law 123-31-12 (5) (a), except that the dollar amount was increased from \$20 to \$25.

Original Source: School District Election Law-- 123-31-11.

The language in 123-31-11 that precincts should include one or more general election precincts was revised, and the wording that the precincts be established five weeks prior to an election was changed to 25 days. In addition, the language in the school law that the board could change the place of election any time before the day of election was revised in this bill

TEXT

precinct and, in case of such change, shall post notices thereof at both the original and newly selected polling places no later than seven a.m. on election day. Electors not residing in the district shall vote at the place or one of the places designated by the board.

89-25-14. Ballots, ballot boxes and voting machines. (1) Either paper ballots or voting machines of an appropriate type may be used at regular or special elections. Prior to the time of the election the secretary of the district shall cause to be prepared and delivered to the election precincts a sufficient number of printed ballots and ballot boxes or sufficient voting machines for said election. Ballots or voting machines shall contain the questions, if any, to be voted upon at said election, and the names of all candidates nominated for director, which names shall be arranged by terms of office in alphabetical order according to surnames. The ballot shall indicate the number and terms of directors to be elected.

(2) All such ballots shall be uniform in every respect and have been printed in clear, plain type so as to give each elector an opportunity to designate, by a cross mark (X) in a sufficient margin at the right of the name of each candidate, his choice of candidates or his vote on any question submitted. At the end of the list of candidates for each different office shall be as many blank spaces as there are persons to be elected to such office, in which the elector may write the name of any eligible person not printed on the ballot for whom he desires to vote; provided, that no cross mark (X) shall be required at the right of the name so written in. There shall be printed on the back of each ballot substantially the following endorsement:

EXPLANATION

to require that such changes can be made only when circumstances beyond the board's control make such a change necessary.

Original Source: School District Election Law 123-31-14.

The wording of the school law used in this section was revised substantially to simplify procedures and reduce election costs. Most special districts covered by this act are relatively small entities with only a few persons eligible to vote. In such a situation, extensive formal provisions describing ballot forms, e.g., that the top part of paper ballots must be divided into two perforated lines with two spaces not less than one inch in width, to be called the stub and duplicate stub respectively, etc., are really unnecessary. Simply requiring clarity, uniformity and assuring proper endorsement and handling of such ballots should be sufficient.

TEXT

EXPLANATION

"Official Ballot of _____ in the District _____, Colorado", together with the date of the election and a facsimile of the signature of the secretary of the district.

(3) Nothing in subsection (2) of this section shall prohibit the use of other mechanical or electronic voting equipment or processes which the secretary of state has approved. The secretary of state shall stipulate that the procedures and protections inherent in this article are adequately safeguarded in such use.

89-25-15. Arrangements for voting. (1) In districts which use paper ballots, each voting place shall be arranged so as to permit voters to prepare their ballots without observation and shall be furnished with such supplies and conveniences as will enable the voter to prepare his ballot for voting.

(2) No person other than the election officials and those admitted for the purpose of voting shall be permitted within the immediate voting area, which shall be considered as within six feet of the voting machines or the voting place except by authority of the judges of election and then only when necessary to keep order and enforce the law.

89-25-16. Hours of voting. At all regular district elections and special district elections the polls shall be open at seven a.m. and shall remain

New: The committee believes that new voting processes -- use of automatic data processing punch cards, electronic counting methods, etc. -- may be developed which could reduce costs and speed-up counting results. This section was added to allow a district to, if they so desire, try new methods (if they should become available) subject to the examination and approval of such equipment by the Secretary of State.

Original Source: Municipal Election Law 49-25-47.

The committee believes that less formality is required in Special District Elections. All that is needed is an assurance of privacy; thus, specific reference to "voting booths" was replaced with the term "voting place"; this could also reduce election expenses.

Taken from a portion of 49-25-48 -- The Municipal Election Law.

Both the School District Election Law -- 123-31-16 -- and the Municipal Election Law -- 49-25-60 -- were used in this sec-

TEXT

open until seven p.m. of the same day. Every person, otherwise qualified to vote, who is standing in line waiting to vote at seven p.m. shall be permitted to vote.

89-25-17. Watchers. (1) Each candidate for the office of director and the district board shall have the right to appoint one watcher in each election precinct. At any election on any question, proponents representing each side of the issue in question shall have the right to appoint one watcher in each election precinct. Watchers shall not disclose the results of the votes until the polls have closed.

(2) Each watcher shall be entitled to serve at a polling place in such district with the right to remain inside the polling place from at least fifteen minutes prior to the opening of the polls until after the completion of the count of votes cast at the election and the certification of the count by the election judges. Each watcher shall have the right to maintain a list of voters, to witness and verify each step in the conduct of the election from prior to the opening of the polls through the completion of the count and announcement of the results, and, in the case of discrepancies, to assist in the correction thereof.

89-25-18. Judge to keep poll book. A judge shall keep a poll book which shall contain the "names of voters". The name of each elector voting shall be entered in regular succession under the heading in the poll book.

89-25-19. Preparing to vote - affidavit. Any person desiring to vote at a district or special election shall sign an affidavit that he is an elector of the district. The affidavit shall be on a form that contains the qualifications for an elector at the election and shall contain a space for the person's name, address, signature, and date of election and

EXPLANATION

tion. The first sentence is taken directly from 123-31-16 and the second sentence was taken from a sentence in 49-25-60.

Taken, in part from 123-31-19 -- the School District Election Law -- and amended to include watchers appointed by the board. The committee believes that the number of watchers should be limited to prevent possible congestion in crowding voting areas.

These provisions were taken from 123-31-2 (8), the definition section of the School District Election Law. See the comment beside Section 1, subsection (4), of this article.

Based upon the Municipal Election Law -- 49-25-64.

Based upon a section in 49-25-65 -- the Municipal Election Law. Other provisions in that section and similar provisions in the School District Election Law -- returning the affidavits to the secretary, etc. -- are incorporated in later sections of this act.

TEXT

EXPLANATION

shall state that he has not previously voted at said election.

89-25-20. Manner of voting in precincts which use paper ballots. (1) In precincts which use paper ballots, an election judge shall give the elector one and only one ballot. On receiving his ballot the elector shall immediately retire alone to one of the voting booths provided, and shall prepare his ballot by marking or stamping in ink or indelible pencil, in the appropriate margin or place, a cross (X) opposite the name of the candidate of his choice for each office to be filled or he may write in the name of a write-in candidate; provided, that no cross mark (X) shall be required opposite the name of a write-in candidate. In case of a question submitted to a vote of the people, the elector shall mark, in the appropriate margin or place, a cross (X) opposite the words expressing his choice. The elector shall then fold his ballot without displaying the marks thereon, and he shall cast his vote by depositing the ballot in the ballot box.

(2) Each elector shall cast his vote without undue delay. No elector shall be allowed to remain within the immediate voting area more than ten minutes. No elector whose name has been entered on the poll book shall be allowed to reenter the immediate voting area during the election, except an election judge or watcher of election.

89-25-21. Disabled voter - assistance. (1) Any person who, because of a physical disability is unable to prepare his ballot, affidavit, or operate the voting machine without assistance, shall be entitled, upon his request, to receive the assistance of any one of the election judges or, at his option, any elector of the district selected by the disabled voter. No person other than an election judge shall be permitted to assist more than one voter.

Section 20 is based upon the Municipal Election Law 49-25-66. Again, references to the use of ballot stubs, etc., were removed. (See the comment on Section 14 of this article.

Based upon Municipal Election Law 49-25-67 and a phrase from 49-25-65.

TEXT

(2) In cases concerning the signing of an affidavit, if the elector is unable to write, he must be assisted by one of the judges of election and such judge must sign the affidavit form witnessing the elector's mark.

(3) A notation shall be made in the poll book opposite the name of each voter thus assisted, stating that the voter has been assisted.

89-25-22. Spoiled ballots. In precincts which use paper ballots, no person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding a total of three, upon returning each spoiled one. The spoiled ballots thus returned shall be immediately cancelled and shall be preserved and returned to the secretary along with other election records and supplies.

89-25-23. Count and certification of votes. (1) Immediately after the close of the polls the judges shall open the ballot box and proceed to count the votes cast, continuing without adjournment until finished. If the number of ballots in the box exceeds the number of names entered in the poll book, the judges of election, without unfolding the ballots, shall examine the endorsement on the backs of the same, and, if in their opinion any one or more of them is not an official ballot, it shall be separated from the others, unopened, and shall not be counted but shall be marked "excess ballot" and set aside. A record of the number of such excess ballots shall be made and certified to the board of directors in the certificate of returns.

(2) As soon as all the ballots shall have been counted the judges shall complete the certificate of returns provided by the secretary, stating the number of votes cast, the number of excess ballots, the number of unused ballots, and the number of votes received by each candidate.

EXPLANATION

This subsection was added to clarify who may assist a person in signing an affidavit. The committee believes that only judges should be allowed to assist a voter in this particular instance.

Taken almost directly from the Municipal Election Law -- 49-25-68.

Subsections (1) and (2) based directly upon the School Election Law -- 123-31-21.

TEXT

EXPLANATION

(3) All persons, except judges and watchers, shall be excluded from the polling place until the count has been completed.

89-25-24. Defective ballots. (1) If a voter fails to mark in ink or indelible pencil or marks more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the choice of any voter for any office to be filled or question submitted his ballot shall not be counted for such office or question. A defective or an incomplete cross marked on any ballot in a proper place shall be counted if there is no other mark or cross on such ballot indicating another intention.

(2) Whenever write-in votes are cast they shall be counted when the intention of the voter is clearly apparent, but not otherwise.

(3) Any ballots, or portion thereof, not counted for any office or question shall be marked "defective in full" or "defective in part" and returned with the ballot box and election materials as provided in section 89-25-25.

89-25-25. Return of ballot box, poll book, and registration list. After the ballots have been counted they shall be returned to the ballot box; the ballot box shall thereupon be sealed and together with the certificate of returns, the poll book, and other election materials, returned to the secretary by one of the judges. Upon receiving the ballot box and poll book, the secretary of the board of directors shall give his receipt therefor.

89-25-26. Preservation of records. The board of directors shall preserve the ballot boxes unopened and intact, as well as other materials and records for at least forty-five days from the day of election, or until otherwise ordered by the district court, after which time the secretary shall open the same and burn their contents, unless the board shall be required to produce them in a court of competent jurisdiction. In districts which use voting machines, the machines may be unlocked and the seals broken after forty-five days

Subsection (3) is the same as 49-25-69
(3) -- Municipal Election Law.

Based upon provisions in 49-25-71 -- Municipal Election Law. This section was substantially revised (simplified), but the basic intent of 49-25-71 was not changed.

Original Source: School District Election Law -- 123-31-22 (1).

Original Source: School District Election Law -- 123-31-26. That law requires that such records be kept for a fifteen-day period. In contrast, the Municipal Election Law -- 49-25-75 -- requires preservation of ballots, etc., for six months. Some committee members believed that the fifteen-day period was too short and others believed six months to be too long.

TEXT

from the date of election unless ordered otherwise by the district court.

89-25-27. Use of voting machines. Voting machines may be used in any election provided the board of directors by resolution authorizes their use. The requirements and procedures prescribed in sections 49-15-1 to 49-15-12, C.R.S. 1963, shall be applicable whenever voting machines are used in regular or special elections under this article.

89-25-28. Judges to inspect machines. The judges of election of each precinct using voting machines shall meet at the polling place therein, at least three-quarters of an hour before the time set for the opening of the polls at each election. Before the polls are open for election, each judge shall carefully examine each machine used in the precinct and see that no vote has been cast and that every counter, except the protective counter, registers zero.

89-25-29. Ballot labels - voting machines. The secretary shall also prepare and place on each voting machine one set of official ballot labels with names of candidates arranged, by term, alphabetically according to surnames. When there is more than one person to be elected to an office, there shall be a space provided for write-in purposes for each different office. No cross-mark (X) shall be required opposite the name of a write-in candidate. The secretary shall deliver the required number of voting machines, equipped with the official ballot, to each election precinct no later than the day prior to the day of the election.

89-25-30. Close of polls and count of votes - voting machines. As soon as the polls are closed the

EXPLANATION

The provision allowing the district court to order voting machines to be unlocked prior to the end of the forty-five day period gives the court the ability to allow the machines to be used in another election.

Source: Based on 49-25-80 -- Municipal Election Law. References to 49-15-1 through 49-15-12 are to the laws governing the use of voting machines in general and primary elections.

Taken directly from the Municipal Election Law -- 49-25-81.

Based upon concepts in the Municipal Election Law -- 49-25-82 (2).

Essentially the same as the Municipal Election Law, 49-25-87.

TEXT

EXPLANATION

judges shall immediately lock and seal each voting machine against further voting, and it shall so remain for the period of forty-five days unless otherwise ordered by the court. Immediately after each machine is locked and sealed the judges shall then open the counting compartments thereof and proceed to count the votes thereon. After the total vote for each candidate and upon each question has been ascertained, the judges shall complete the certificate of returns provided by the secretary and return the same together with the poll book, and other election materials to the secretary as provided in section 89-25-25.

89-25-31. Absentee voting. (1) An elector may vote in an organizational, regular, or a special election by absent voter's ballot in substantially the same manner as is set forth in sections 49-14-1 to 49-14-21, C.R.S. 1963, except as specifically modified in this section.

(2) All acts required or permitted therein to be performed by the county clerk shall be performed by the secretary or assistant secretary of the board appointed by the board for such purpose.

(3) An elector may apply for an absent voter's ballot not earlier than twenty days nor later than the close of business on the Friday immediately preceding the election.

(4) The return envelope for the absent voter's ballot shall have printed thereon an affidavit containing a statement of the qualifications for an elector, and it shall contain a space for the person's

Taken from provisions in the School District Election Law, 123-31-19. Portions of 123-31-19 were rewritten and simplified. However, it is the intent of the committee to retain concepts provided in the aforementioned sections.

Section 123-31-19 of the school law allows application as late as three days prior to the election. Because Section 1 (7) allows Saturdays to be counted as a calendar day (but business need not be conducted on a Saturday) and because both regular and special elections are to be held on a Tuesday, the committee recommends that the Friday before an election be the last day application can be made for an absent voter's ballot.

Based upon 123-31-19 (5).

TEXT

name, address, signature, and date of election. The voter shall sign the affidavit stating that he is an elector of the district and that he has not previously voted at said election.

89-25-32. Challenges. (1) When any person who has signed an affidavit as provided in section 89-25-19, offers to vote at any regular or special election, his right to vote at that polling place and election may be challenged by an election judge, watcher, or any other elector of the district.

(2) Each challenge shall be made by written oath, signed by the challenger under penalty of perjury, setting forth the name of the person challenged and the basis for the challenge. The judges of election shall deliver all challenges and oaths to the secretary of the board of directors at the time the other election papers are returned. The secretary of the board of directors shall forthwith deliver all challenges and oaths to the district attorney for investigation and appropriate action.

(3) If a person offering to vote be challenged as unqualified, one of the judges of election may require him to answer, under oath any pertinent questions as concern his qualifications as an elector at such regular or special election.

(4) If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him, he shall be allowed to vote and the judges of election shall write "challenged" on the poll book after the person's name. If he shall refuse to answer said questions, his vote shall be rejected.

89-25-33. Canvass of votes - certificate of election. Immediately upon receiving all the returns of election the secretary shall call a meeting of the board of directors to meet not more than three days later. At such meeting the board of directors shall proceed to open and examine the certificate of returns and shall canvass the votes cast. It shall be the

EXPLANATION

Subsections (1) through (4) are based upon 123-31-20 (2) through (5) -- School District Election Law. The basic concepts in the School District Election Law were not changed but these subsections were rewritten or amended to conform to the requirements inherent in this new election law.

Original Source: School District Election Law, 123-31-20 (4).

Original Source: School District Election Law, 123-31-20 (5) (a) and (b).

Based upon the provisions in 123-31-24 -- School District Election Law.

TEXT

EXPLANATION

duty of the board immediately upon the conclusion of such canvass to make out and post a certificate of the election results at the regular meeting place of the district. A duplicate of each certificate of election shall be forwarded to the division of local government.

89-25-34. Imperfect returns. Whenever the board shall find that the returns from any precinct do not strictly conform to the requirements of law in the making, certifying and returning the same, the votes cast in such precinct nevertheless shall be canvassed and counted, if such returns shall be sufficiently explicit to enable such persons authorized to canvass votes and returns to determine therefrom how many votes were cast for the several candidates.

89-25-35. Corrections. If upon proceeding to canvass the votes it shall clearly appear to the board that in any statement made to them certain matters are omitted which should have been inserted, or that any clerical mistakes exist, it shall cause the statement to be sent to the precinct judges from whom it was received to have the same corrected. The judges of election, when so demanded, shall make such correction as the facts of the case required, but shall not change or alter any decision previously made by them. The board may adjourn from day to day for the purpose of obtaining and receiving such statement.

89-25-36. Recount of votes - board to conduct. Upon completion of the canvass of votes if the board believes that sufficient question as to the validity and accuracy of the results of the election exists it shall have the power to conduct a recount of the ballots cast or the votes tabulated on the voting machines in the precinct or precincts in which the results are questionable. The board may require the production before it of such witnesses, documents, records, and other evidence regarding the legality of any vote cast or counted and may correct the canvass in accordance with its findings based on the evidence

Original Source: Municipal Election Law -- 49-25-116.

Original Source: Municipal Election Law -- 49-25-117.

Excerpted from 49-17-12, C.R.S. 1963. Section 38 of this draft contains references to 47-17-10 to 49-17-13 and 49-17-15 which allow the district court to follow similar procedures in election contests.

TEXT

EXPLANATION

presented.

89-25-37. Tie - lots - notice to candidates. If any two or more candidates receive an equal and the highest number of votes for the same office, and if there be not enough offices remaining for all such candidates, then the candidates in conjunction with the secretary shall determine by lot the person or persons elected. Reasonable notice shall be given to such candidates of the time when such election will be so determined.

89-25-38. Contests. Proceedings to contest the election of any person or the results of election on any question may be instituted by any qualified elector of such district. Such proceedings shall be instituted within thirty days after the votes cast at such election are canvassed. The district court which organized the district shall have jurisdiction in all contests for the elections of any such district. In such cases the rules of practice and procedure in contested elections in sections 49-17-10 to 49-17-13, and section 49-17-15, C.R.S. 1963, shall apply as far as applicable.

89-25-39. District judge to preside - bond. (1) All contested election cases of district officers shall be tried and determined in the district court of the county in which the district was organized. The style and form of process, the manner of service of process and papers, the fees of officers, and judgment for costs and execution thereon shall be according to the rules and practices of the district court.

(2) Before the district court shall be required to take jurisdiction of the contest, the contestor must file with the clerk of said court a bond, with sureties, to be approved by the district judge, running to said contestee or the district and conditioned to pay all costs in case of failure to maintain the contest.

Original Source: Municipal Election Law -- 49-25-118.

Original Source: School District Election Law -- 123-31-27. The District Court has been given jurisdiction throughout the re-codification. Statutory references are to contests for county officers.

Essentially the same as the Municipal Election Law -- 49-25-126.

TEXT

EXPLANATION

89-25-40. Controversies. (1) Whenever any controversy arises between any official charged with any duty or function under this article and any candidate or other person, the district court, upon the filing of a verified petition by any such official or persons setting forth in concise form the nature of the controversy and the relief sought, shall issue an order commanding the respondent in such petition to appear before the court and answer under oath to such petition. It shall be the duty of the court to summarily hear and dispose of any such issues, with a view to obtaining substantial compliance with the provisions of this article by the parties to such controversy, and to make and enter orders and judgments, and issue the writ of process of such court to enforce all such orders and judgments.

(2) Such proceedings may be reviewed and finally adjudicated by the supreme court of the state, if application to such court is made within five days after the termination thereof by the court to which the petition was filed, if the supreme court shall be willing to assume jurisdiction of the case.

89-25-41. District attorney or attorney general to prosecute. (1) Any person may file with the district attorney an affidavit stating the name of any person who has violated any of the provisions of this article and stating the facts which constitute the alleged offense. Upon the filing of such affidavit, the district attorney shall forthwith investigate, and if reasonable grounds appear therefor, he shall prosecute the same.

(2) The attorney general of the state shall have equal power with the district attorneys to file information or complaints against any persons for violating any provision of this article.

89-25-42. Sufficiency of complaint - judicial notice. Irregularities or defects in the mode of

Essentially the same as the Municipal Election Law -- 49-25-135.

Similar to the Municipal Election Law -- 49-25-140.

Essentially the same as Municipal Election Law -- 49-25-141.

TEXT

EXPLANATION

calling, giving notice of, convening, holding, or conducting any regular or special election shall constitute no defense to a prosecution for violation of this article. When an offense shall be committed in relation to any regular or special election, an indictment, information, or complaint for such offense shall be sufficient if it alleges that such election was authorized by law, without stating the call or notice of the election, the names of the judges holding such election, or the names of the persons voted for at such election. Judicial notice shall be taken of the holding of any regular or special election.

89-25-43. Election offenses - penalties. The election offenses and penalties prescribed by sections 49-23-1 through 49-23-6 and sections 49-23-8 through 49-23-31, C.R.S. 1963, shall be applicable to regular and special elections.

89-25-44. Oath and bond of directors. (1) Each director shall, within thirty days after his election, appear before some officer authorized to administer oaths and take an oath that he will faithfully perform the duties of his office as required by law, and will support the constitution of the United States, the constitution of the state of Colorado, and the laws made pursuant thereto. The oath may be administered by the county clerk or by the president of the board of directors and shall be filed with the county clerk of the county in which the headquarters of the district is located and with the division of local government.

(2) At the time of filing said oath, there shall also be filed for each director an individual, schedule, or blanket surety bond at the expense of the district, in an amount not less than one thousand dollars each, conditioned upon the faithful performance of his duties as director.

Based upon the School District Election Law -- 123-31-30. References are to the penalties described in the law governing elections for county officers.

Essentially the same as the School District Election Law -- 123-31-25.

TEXT

EXPLANATION

(3) If any director fails to take the oath or furnish the requisite bond within the period allowed, his office shall be deemed vacant, and the vacancy thus created shall be filled in the same manner as other vacancies in the office of director.

89-25-45. Officers subject to recall. Every elective officer of any district may be recalled from office at any time by the electors entitled to vote for a successor of such incumbent, in the manner provided for in sections 89-25-46 to 89-25-48.

89-25-46. Recall - procedure. (1) (a) The procedure to effect the recall of an elective officer of any district shall be as follows:

(b) A petition signed by electors entitled to vote for a successor of the incumbent sought to be recalled, equal in number to forty percent of all ballots cast for that particular office at the last preceding regular election in said district demanding an election of the successor to the officer named in said petition; shall be filed in the office in which petitions for nomination to office held by the incumbent sought to be recalled are required to be filed.

(c) Such petition shall contain a general statement in not more than two hundred words, of the grounds on which such recall is sought, which statement is intended for the information of the electors.

(d) The electors shall be the sole and exclusive judges of the legality, reasonableness, and sufficiency of such grounds assigned for such recall, and said grounds shall not be open to review.

Source: 139-15-5, C.R.S. 1963, as amended in 1969. The committee believes that this approach (adopted for cities and towns in 1969) provides a better procedure than provisions in either the School or Municipal Election Laws. In the opinion of the committee, the procedures for determining the sufficiency of a petition are more complete and workable than those provided in chapters 49 or 123.

See above comment next to section 45 of this article.

TEXT

EXPLANATION

89-25-47. Recall petition - sufficiency - review. (1) All hearings shall be before the officer with whom such recall petition is filed, and all testimony shall be under oath. Such hearings shall be summary and not subject to delay, and must be concluded within thirty days after such petition is filed, and the result thereof shall be forthwith certified to the persons representing the signers of such petition. In case the petition is not sufficient it may be withdrawn by the person or a majority of the persons representing the signers of such petition, and, within fifteen days thereafter, may be amended and refiled as an original petition. The finding as to the sufficiency of any petition may be reviewed by any state court of general jurisdiction in the county in which such district is located, upon application of the person or a majority of the persons representing the signers of such petition, but such review shall be had and determined forthwith. The sufficiency, or the determination of the sufficiency, of the petition referred to in this section shall not be held or construed to refer to the grounds assigned in such petition for the recall of the incumbent sought to be recalled from the office thereby.

(2) When such petition is sufficient, the officer with whom such recall petition was filed shall forthwith submit said petition, together with a certificate of its sufficiency to the board of the district, which board shall thereupon order and fix the date, holding the election not less than thirty days nor more than sixty days from the date of submission of said petition. If a regular election is to be held within ninety days after the date of submission of said petition, the recall election shall be held as a part of said regular election.

See comment next to section 45 of this article.

TEXT

EXPLANATION

89-25-48. Recall election - resignation. (1) If an officer subject to a recall petition shall offer his resignation, it shall be accepted, and the vacancy caused by such resignation, or from any other cause, shall be filled as provided by section 89-23-18. If such officer shall not resign within five days after the sufficiency of the recall petition shall have been sustained, the board shall make, or cause to be made, publication of notice for the holding of such election, and the same shall be conducted, returned, and the result thereof declared in all respects as in the case of regular elections.

89-25-49. Vacancies. (1) (a) A director's office shall be deemed to be vacant upon the occurrence of any one of the following events prior to the expiration of the term of office:

(b) If for any reason a properly qualified person shall not be elected to a director's office by the electors as may be required at a regular election.

(c) If the person who was duly elected or appointed shall fail, neglect, or refuse to subscribe to an oath of office or bond as provided in section 89-25-44.

(d) If the person who was duly elected or appointed shall submit a written resignation to the board of directors and such resignation shall have been duly accepted by the board of directors.

(e) If the person who was duly elected or appointed shall cease to be qualified for the office to which he was elected.

(f) If the person who was duly elected or appointed shall be found guilty of a felony.

(g) If a court of competent jurisdiction shall void his election or appointment or remove the person duly elected or appointed for any cause whatsoever, but only after his right to appeal shall have been

See comment next to Section 45 of this article.

Essentially the same as the School District Election Law -- 123-31-29. Subsection (2) was revised to conform to the needs of special districts and to earlier portions of this act.

TEXT

EXPLANATION

waived or otherwise exhausted.

(h) If the person who was duly elected or appointed shall not attend three consecutive regular meetings of the board of directors without the board of directors having entered upon its minutes an approval for an additional absence, or absences; provided that such additional absence or absences shall not be due to a temporary mental or physical disability or illness.

(i) If the person who was duly elected or appointed shall die during his term of office.

(2) Vacancies occurring under this section shall be filled as provided in section 89-23-18. All appointments shall be evidenced by an appropriate entry in the minutes of the meeting and the board shall cause a certificate of appointment to be delivered to the person so appointed. A duplicate of each certificate of appointment shall be forwarded to the division of local government.

(3) An appointee to the office of director shall serve until the next regular election.

89-25-50. Article to be liberally construed. This article shall be liberally construed so that all legally qualified electors may be permitted to vote and so that fraud and corruption in district elections may be prevented.

SECTION 2. Repeals. (1) 89-17-1 and 89-17-2, Colorado Revised Statutes 1963 (1967 Supp.), and 137-1-10 (1), Colorado Revised Statutes 1963, as amended by section 11 of chapter 90, Session Laws of Colorado 1970, are repealed as of the effective date of this act.

(2) Articles 1, 3, 5, 6, 11, 12, 13, 14, 17, and 18 of chapter 89, Colorado Revised Statutes 1963, are repealed as of 12:01 a.m. on July 1, 1972.

Original Source: Municipal Election Law
-- 49-25-180.

TEXT

EXPLANATION

SECTION 3. Effective date. This act shall take effect upon signature of the governor.

SECTION 4. 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.