Please Vote NO on SB 22-136

Special District Governance

[Industry Position] **Senate Bill 22-136 has far reaching, unconstitutional impacts.**
This bill applies to ALL special districts, such as Parks and Recreation Districts, Water and Sanitation Districts, Metropolitan Districts, Hospital Districts, and Fire Districts. We question the need for such sweeping, arguably unconstitutional changes, and the costs and administrative burdens associated therewith.

[Resident Position] Section 2 by its express language applies only to metro districts. No objection to amending Section 1 to apply to only Metropolitan Districts.

Why do we have special districts in the first place?
Special districts are a form of local government that are used to construct, finance, and maintain public improvements. The establishment of a special district involves the oversight of municipalities and counties and allows communities to be built out with a wide array of services from fire protection to golf courses to public transportation. There are over 3,000 special districts in Colorado, some with as few as 10 resident members, some with thousands. In the housing arena, special districts keep the up-front cost of new homes down by funding public infrastructure (roads, sewer, parks, etc.) with low-cost municipal bonds that are paid back over time. This is vital in today's economic climate.

Unfortunately, from the very beginning in 1981, metro districts were manipulated to create a developer government where the developer imposed high tax burdens on the residents and at the same time eliminated the right of residents to vote on tax and bond debt. Those abuses have only become more prevalent and oppressive to the resident taxpayers. In fact, metro districts are the opposite of affordable housing.

What are the main problems with SB 22-136?

1. **Citizen Initiatives and Referendums Categorically DO NOT WORK for Special Districts.**
   Section 1 of the bill extends the powers of initiative and referendum to special districts. That constitutional power is currently reserved for municipal and state electors.

   Colorado Constitution Article V Section 1: "9) The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. . . ."

   There is nothing in the Colorado Constitution prohibiting the application of the "initiative and referendum powers reserved to the people" to special districts.

   The initiative and referendum process that applies to municipalities in Title 31, Article 11 (cross referenced in Section 1 of the bill) simply does not work in a special district because special districts do NOT enact local ordinances or otherwise legislate.

The very first act by the developer is legislative:

- passing ballot issues creating extraordinary debt authority on future residents and
- eliminating the right of future residents to vote on issuing tax and bond debt

Later in the life of a metro district typically before the residents obtain control of the board, the developer board performs fundamental legislative acts of imposing taxes and issuing debt paid by the residents' taxes, without any vote by the residents. Initiative and referendum powers reserved to the people clearly apply to the legislative function of imposing taxes and bond debt on the resident electors.

Virtually all metropolitan district boards legislate, such as adopting regulations for the use of facilities, adopting fee structures, entering into intergovernmental agreements with developer-controlled districts. Special districts issue resolutions for bonds, authorizing interest rates and the pledge of fees for repayment.

Please note, voters in school districts also do not have this power either.

This is irrelevant.

The powers of initiative and referendum reserved in the Colorado State Constitution are for statewide and municipal electors acting in a legislative role – not special district electors – *so an amendment to the state constitution is likely necessary* for this right to apply to other forms of government in Colorado.

See Colorado Constitution Article V Section 1. There is nothing in the Colorado Constitution prohibiting the application of the "initiative and referendum powers reserved to the people" to special districts.

The legislature has provided initiative and referendum rights to citizens in home rule counties (CRS 30-11-508), when counties adopt a sales tax (CRS 29-2-104) and as to local government development agreements (CRS 24-68-103(1)(c) and CRS 24-68-102(2)) without a constitutional amendment.

Moreover, the legislature has provided the right to developers to a citizen initiative as to the initial ballot. (CRS 32-1-803.5 and CRS 32-1-305) In this ballot initiative, the developer imposes extraordinary debt authority on the residents and eliminates their right to vote on tax and bond debt.

Can it be true that the legislature would give the developer the right to a citizen initiative in the initial ballot which is used to restrict the actual resident taxpayers' rights and then deny the same right to the actual resident taxpayers when they finally arrive and face the oppressive impact of the developer's citizens' initiative?

Special district service plans reflect a thoughtful, long-term plan to provide necessary public services and infrastructure. Cities and counties review and approve service plans of special districts, which set forth the funding, construction, operation, and maintenance of the public improvements for a variety of purposes, including supporting new growth.

Service Plans in fact are boilerplate documents prepared by the developer's counsel. There is not much difference even among the major law firms drafting these documents.

Cities and Counties as a rule do not engage in any substantive review or preparation of Service Plans. This is changing for a small minority of jurisdictions that are addressing metro district abuse.

SB 22-136, by proposing to extend initiative and referendum powers to special districts, introduces uncertainty about the completion of public improvements or provision of services that could stop new, vitally needed development.

As recently explained by an industry spokesperson, metro districts have one primary purpose - paying back the developer for his costs of building the infrastructure - the $30,000 - $40,000 per lot it costs to put pipes in the ground and pave the streets.

Initiative and referendum powers have no impact on how much and when the developer spends money to build infrastructure.

This initiative and referendum process cannot affect city or county building plans, and cannot be in contravention of the service plan. In other words, citizens cannot restrict development applications or zoning. That is between the city and the developer.

The metro district is not created to provide financing to repay the developer until after the site plan and zoning approvals are granted to the developer.The developer has the obligation to comply with the zoning and site plan approvals to build the infrastructure.

However, under the metro district government, the citizens have the right to hold the developer accountable and determine HOW the developer will be compensated for the infrastructure costs through taxes, fees, etc. consistent with TABOR.

Initiative and referendum powers hold the developer accountable to make sure taxes and debt issued to repay the developer are paid for appropriate costs

- By choosing to create a metro district, the developer chooses to become a government, accountable to the voters/taxpayers.
- The way voters/taxpayers are able to hold governments accountable for taxing and spending is through the vote.
- If the developer wants to use a government to pay himself for the infrastructure, he has to accept the obligation of a government to be accountable to the voter/taxpayer.
- The initiative and referendum is the most effective tool available to hold the developer accountable since the developer eliminated the taxpayer/voter's right to vote on tax and bond debt in the first ballot issue.

Elections are expensive for all levels of government. The voter initiative and referendum proposal in the bill would be an unbudgeted, and potentially frequent, cost for districts. Special districts operate with limited taxing authority or ability to absorb unanticipated costs. The costs

of a local election vary. One certainty is that the cost-per-elector increases greatly as the number of ballots decreases; therefore, the fiscal impact of conducting a special election for a small special district may be 10 times more than a mid-size or large district. Based on a survey of special elections in districts, the average cost, with inflation, exceeds $40,000 per election.

The right to citizen initiative and referendum is a constitutional check and balance on government. It is particularly necessary where the government has an express and documented conflict of interest with the voter/taxpayer. If the developer is fulfilling his responsibilities to the voter/taxpayer, there will not be any citizen initiatives and referendum.

2. **Stripping duly elected board members from their seat is arguably unconstitutional.**
Section 2 of the bill allows for the termination of a board director's seat mid-term if a resident files a self-nomination form. Therefore, a duly elected board director will be disenfranchised mid-term. Under current law, if eligible electors want a board director removed, they can exercise their rights at the next election or use the recall election process. Electors in special districts have the same options available to voters in *all other types of elected government in Colorado*. These options are common in Colorado because they are cost-effective and follow democratic procedures. Further, Section 2 of the bill does not only apply to developer-controlled districts. As written, SB 22-136 applies to all special districts. That makes no sense.

Section 2 applies to developer-affiliates who qualify as electors pursuant to Title 32, Section 32-1-808 (2). These non-residents only serve on the board "because no one else wanted to run" pursuant to an exception under Title 32 that allows a developer to qualify a non-resident.

This developer affiliate has no right to sit on the board as long as a resident is willing to serve. Once a resident is willing to serve, the developer affiliate no longer qualifies for the exception and must be replaced.

3. **Administrative and Cost Burdens**
Section 2 of the bill also requires board packets to be MAILED to all residents. This is costly, environmentally irresponsible, and ineffective. The recent changes enacted in SB 21-262 require that election materials, annual reports, budgets, audits, transparency notices, etc. to be provided at the most accessible and cost-effective manner. This bill goes the opposite direction.

Colorado Open Meetings Law already requires governments – including special districts – to provide public notice of ALL meetings and to post agendas at least 24 hours prior to each meeting. The requirement in SB 22-136 that a hard copy of a board packet be mailed to each resident is not well-developed because it does not specify any procedures. Presumably, compliance would require meetings be called excessively far in advance so that lists can be compiled or ordered from a county depository listing each resident, packets printed, then mailed with presumably with sufficient time to be received prior to the meeting. Section 2 of the bill ignores the many transparency requirements already in place for special districts and is antithetical to the efficient management of government business.

Support amending it to requiring agendas and board packets be emailed or posted on the website with a mailed notecard with the link to the site.

The following entities respectfully request a NO vote on SB 22-136

Special District Association of Colorado, Metropolitan District Education Coalition, Colorado Association of Homebuilders, Building Jobs for Colorado, NAIOP, Homeownership Opportunity Alliance…

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