

COLORADO NEW ENERGY IMPROVEMENT DISTRICT

32-20-101. Short title.

This article shall be known and may be cited as the "New Energy Jobs Creation Act of 2010".

32-20-102. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) It is in the best interest of the state and its citizens and a public purpose to enable and encourage the owners of eligible real property to invest in new energy improvements, including energy efficiency improvements and renewable energy improvements, sooner rather than later by creating the Colorado new energy improvement district and authorizing the district to establish, develop, finance, implement, and administer a new energy improvement program that includes both energy efficiency improvements and renewable energy improvements to assist any such owners who choose to join the district in completing new energy improvements to their property because:

(I) New energy improvements, including energy efficiency improvements and renewable energy improvements, help protect owners of eligible real property from the financial impact of the rising cost of electricity produced from nonrenewable fuels and can even provide positive cash flow in many instances in which the costs of the improvements are spread out over a long enough time so that the owners' utility bill cost savings exceed the special assessments levied on the eligible real property to pay for the improvements;

(II) The inclusion of both energy efficiency improvements and renewable energy improvements in the new energy improvement program will help to promote informed choices and maximize the benefits of the program for both individual owners of eligible real property and society as a whole;

(III) Reduction in the amount of emissions of greenhouse gases and environmental pollutants resulting from decreased use of traditional nonrenewable fuels will improve air quality and may help to mitigate climate change;

(IV) New energy improvements, including energy efficiency improvements and renewable energy improvements, increase the value of the eligible real property improved;

(V) The commitment of a significant amount of sustainable funding for increased construction of new energy improvements will create jobs and stimulate the state economy:

(A) By directly creating jobs for contractors and other persons who complete new energy improvements; and

(B) By reinforcing the leadership role of the state in the new energy economy and thereby attracting new energy manufacturing facilities and related jobs to the state; and

(VI) The new energy improvement program provides a meaningful, practical opportunity for average citizens to take action that will benefit

their personal finances and the economy of the state, promote their own and the nation's energy independence and security, and help sustain the environment; and

(b) In many cases, the owner of eligible real property is unable to fund a new energy improvement because the owner does not have sufficient liquid assets to directly fund the improvement and is unable or unwilling to incur the negative net cash flow likely to result if the owner uses a typical home equity loan or line of credit or other loan to fund the improvement.

(2) The general assembly further finds and declares that it is necessary, appropriate, and legally permissible under section 20 of article X of the state constitution and all other constitutional provisions and laws to authorize the Colorado new energy improvement district, without voter approval in advance, to generate the capital needed to reimburse owners of eligible real property who voluntarily join the district for, or directly pay for all or a portion of the cost of, completing new energy improvements, including energy efficiency improvements and renewable energy improvements, to the property by levying special assessments and issuing special assessment bonds to be paid from the revenues generated by the special assessments because:

(a) Under the Colorado supreme court's decision in *Campbell v. Orchard Mesa Irrigation District*, 972 P.2d 1037 (Colo. 1998), the Colorado new energy improvement district is neither the state nor a local government and therefore is not a district, as defined in section 20 (2) (b) of article X of the state constitution, subject to the requirements of section 20 of article X of the state constitution because:

(I) The district is not authorized to levy general taxes;

(II) Although the district is a public corporation that serves the public purposes of promoting new energy improvements and creating jobs, it does not have elected board members and primarily exists to serve the interests of owners of eligible real property who voluntarily join the district in order to fund new energy improvements to the property; and

(III) The district is endowed by the state pursuant to this article with only the powers necessary to perform its predominantly private objective;

(b) There is no legal impediment to the imposition of special assessments and the issuance of special assessment bonds without an election by an entity like the Colorado new energy improvement district that is formed by law, has statewide jurisdiction, and is governed by an appointed board;

(c) The burden of a special assessment is voluntarily assumed by the owner of the eligible real property on which the special assessment is levied because:

(I) A special assessment may only be levied on eligible real property if the owner of the property has voluntarily joined the district, agreed to accept reimbursement or a direct payment, and consented to the levy of a special assessment; and

(II) A subsequent purchaser of eligible real property upon which a special assessment has been levied purchases the property with full knowledge of the special assessment; and

(d) Both an owner of eligible real property who joins the district and receives reimbursement or a direct payment and any subsequent owner of the property

receive the special benefit of the new energy improvement for which the district has made reimbursement or a direct payment in proportion to or in excess of the amount of the special assessment paid.

32-20-103. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Board" means the board of directors of the district.
- (1.5) "Commercial building" means any real property other than a residential building containing fewer than five dwelling units and includes any other improvement or connected land that is billed with the improvement for purposes of ad valorem property taxation.
- (2) "District" means the Colorado new energy improvement district created in section 32-20-104 (1).
- (3) "District member" means a qualified applicant whose application to join the district, receive reimbursement or a direct payment, and consent to the levying of a special assessment is approved by the district.
- (4) "Eligible real property" means a residential or commercial building, located within a county in which the district has been authorized to conduct the program as required by section 32-20-105 (3), on which or in which a new energy improvement to be financed by the district has been or will be completed.
- (5) "Energy efficiency improvement" means one or more installations or modifications to eligible real property that are designed to reduce the energy consumption of the property and includes, but is not limited to, the following:
 - (a) Insulation in walls, roofs, floors, and foundations and in heating and cooling distribution systems;
 - (b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
 - (c) Automatic energy control systems;
 - (d) Heating, ventilating, or air conditioning and distribution system modifications or replacements in a building;
 - (e) Caulking and weather stripping;
 - (f) Replacement or modification of lighting fixtures to increase the energy efficiency of the system;
 - (g) Energy recovery systems;
 - (h) Daylighting systems;
 - (i) Electric vehicle charging equipment added to the building or its associated parking area; and
 - (j) Any other modification, installation, or remodeling approved as a utility cost-savings measure by the district.
- (6) "Loan balance" means the outstanding principal balance of loans secured by a mortgage or deed of trust with a first or second lien on eligible real property.
- (7) "New energy improvement" means one or more on-site energy efficiency improvements or renewable energy improvements, or both, made to eligible real property that will reduce the energy consumption of or add energy produced from renewable energy sources with regard to any portion of the eligible real property.

(8) "Program" means the new energy improvement program established by the district in accordance with section 32-20-105.

(9) "Program administrator" or "administrator" means an entity hired by the district to administer the program on behalf of the district to the extent specified in a contract between the district and the administrator. Neither the district nor its program administrator shall offer rebates for the purchase of renewable energy credits. The district's activities shall be limited to funding new energy improvements and to marketing that funding.

(10) "Qualified applicant" means a person who:

(a) Repealed in 2013.

(b) Timely submits to the district a complete application, which notes the existence of any first priority mortgage or deed of trust on the eligible real property and the identity of the holder thereof, to join the district, have the eligible real property included in the district's boundaries, receive reimbursement or a direct payment, and consent to the levying of a special assessment on the property. Within thirty days of a person's submission of an application to the district, the district shall provide written notice to the holder of any first priority mortgage or deed of trust on the eligible real property that the person is participating in the district.

(c) Meets any standard of credit-worthiness that the district may establish.

(11) "Reimbursement or a direct payment" means the payment by the district to a district member, or on behalf of such a district member to a contractor that has completed a new energy improvement to the district member's eligible real property, of all or a portion of the cost of completing a new energy improvement. Utility rebates offered to program participants by a qualifying retail utility for the purpose of compliance with renewable energy targets established in section 40-2-124, C.R.S., are subject to the retail rate impact cap established pursuant to section 40-2-124 (1) (g) (I), C.R.S.

(12) "Renewable energy improvement" means one or more fixtures, products, systems, or devices, or an interacting group of fixtures, products, systems, or devices, that directly benefit eligible real property through a qualified community location, as defined in section 30-20-602 (4.3), C.R.S., enacted by Senate Bill 10-100, enacted in 2010, or that are installed behind the meter of any eligible real property and that produce energy from renewable resources, including, but not limited to, photovoltaic, solar thermal, small wind, low-impact hydroelectric, biomass, fuel cell, or geothermal systems such as ground source heat pumps, as may be approved by the district; except that no renewable energy improvement shall be authorized that interferes with a right held by a public utility under a certificate issued by the public utilities commission under article 5 of title 40, C.R.S. Nothing in this article shall limit the right of a public utility, subject to article 3 or 3.5 of title 40, C.R.S., or section 40-9.5-106, C.R.S., to assess fees for the use of its facilities or modify or expand the net metering limitations established in sections 40-9.5-118 and 40-2-124 (7), C.R.S. Primary jurisdiction to hear any disputes as to whether a renewable energy improvement interferes with such a right shall lie:

(a) In the case of a regulated utility, with the public utilities commission; and

(b) In the case of a municipally-owned electric utility, with the governing body of the municipality.

(13) "Residential building" means an improvement to real property that is designed for use predominantly as a place of residency. The term also includes any other improvement or connected land that is billed with the improvement for purposes of ad valorem property taxation.

(14) "Special assessment" or "assessment" means a charge levied by the district against eligible real property specially benefited by a new energy improvement for which the district has made or will make reimbursement or a direct payment that is proportional to the benefit received from the new energy improvement and does not exceed the estimated amount of special benefits received or the full cost of completing the new energy improvement.

(15) "Special assessment bond" or "bond" means any bond, note, interim certificate, loan agreement, contract, or other evidence of borrowing of the district issued by the district pursuant to this article that is payable, in whole or in part, from revenues generated by special assessments levied as authorized in this article and, at the discretion of the board, from any other legally available source of moneys lawfully pledged for their repayment.

32-20-104. Colorado new energy improvement district - creation - board - meetings - quorum - expenses - records.

(1) The Colorado new energy improvement district is hereby created as an independent public body corporate, and the boundaries of the district shall include the eligible real property that is owned by a person who has voluntarily joined the district. The district constitutes a public instrumentality, and its exercise of the powers conferred by this article shall be deemed and held to be the performance of an essential public function, but the district:

- (a) Shall not be an agency of state government or of any local government;
- (b) Shall not be subject to administrative direction by any department, commission, board, or agency of the state or any local government; and
- (c) Shall not be a district, as defined in section 20 (2) (b) of article X of the state constitution, for purposes of section 20 of said article X.

(2)

(a) The district is governed by a board of directors, which shall exercise the powers of the district, shall, by a majority vote of a quorum of its members, select from its membership a chair, vice-chair, and secretary, and is composed of seven members, including:

- (I) The director of the governor's energy office created in section 24-38.5-101 (1), C.R.S or the director's designee;
- (II) The following six members appointed by the governor by September 1, 2013:

- (A) One member who has executive-level experience in commercial or residential real estate development;
- (B) Two members who each have at least ten years of executive-level experience with one or more financial institutions, at least one of whom has had such experience with one or more financial institutions having total assets of less than one billion dollars;
- (C) One member who has executive-level experience in the utility industry;

(D) One member who represents the energy efficiency industry;
and

(E) One member who represents the renewable energy industry.

(b) The terms of the appointed members shall be four years; except that the terms of the members initially appointed by the governor, the speaker of the house of representatives, and the minority leader of the senate shall be two years.

(c)

(I) Notwithstanding any other law, it is not a conflict of interest for a trustee, director, officer, or employee of any public utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, insurance company, law firm, or other firm, corporation, or business entity to serve as a board member, the executive director of the district, or an employee of the district. However, a board member, executive director, or other employee who is also such a trustee, director, officer, or employee shall disclose his or her business affiliation to the board and shall abstain from voting or otherwise taking action in any instance in which his or her business affiliation is directly involved.

(II) A member of the board, any executive director of the district, and any employee of the district shall be immune from civil liability for any action taken in good faith in the course of the member's, director's, or employee's duties for the district.

(d) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including travel and lodging expenses, incurred in the discharge of their official duties. Any payments for compensation and expenses shall be paid from funds of the district.

(3) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising the powers of the board. Action may be taken by the board upon the affirmative vote of at least four of its members. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(4) The district shall be subject to the open meetings provisions of the "Colorado Sunshine Act of 1972", part 4 of article 6 of title 24, C.R.S., and the "Colorado Open Records Act", part 2 of article 72 of title 24, C.R.S. The board shall also promulgate and adhere to policies and procedures that govern its conduct, provide meaningful opportunities for public input, and establish standards and procedures for calling emergency meetings. One or more members of the board may participate in a meeting of the board and may vote through the use of telecommunications devices, including, but not limited to, a conference telephone or similar communications equipment. Participation through telecommunications devices shall constitute presence in person at a meeting. The use of telecommunications devices shall not supersede any requirements for a public hearing otherwise provided by law.

(5) The district shall be subject to the "Local Government Budget Law of Colorado", part 1 of article 1 of title 29, C.R.S., and the "Colorado Local Government Audit Law", part 6 of article 1 of title 29, C.R.S.

(6) The district shall be considered a special district included within the definition of the state or any of its political subdivisions set forth in section 2 (14.6) of article XXVIII of

the state constitution and shall, accordingly, be subject to the sole source contracting provisions of sections 15 to 17 of said article XXVIII.

(7) Because the district is not a part of state government or a county or municipality, neither the district nor any member of the board, executive director of the district, or employee of the district shall be subject to the provisions of article XXIX of the state constitution.

32-20-105. District - purpose - general powers and duties - new energy improvement program.

(1) The purpose of the district is to help provide the special benefits of new energy improvements to owners of eligible real property who voluntarily join the district by establishing, developing, financing, and administering a new energy improvement program through which the district can provide assistance to such owners in completing new energy improvements. The district may exercise any of the powers granted to the district in this article before any eligible real property is included within the boundaries of the district; except that the district shall exercise the powers to levy special assessments and issue special assessment bonds only after eligible real property is included within the boundaries of the district.

(2) In order to allow the district to achieve its purpose, in addition to any other powers and duties of the district specified in this article, the district shall have the following general powers and duties:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To adopt bylaws for the regulation of its affairs and conduct of its business;
- (d) To set an annual budget;
- (e) To sue and be sued and to be a party to suits, actions, and proceedings;
- (f) To enter into contracts and agreements needed for its functions or operations;
- (g) To acquire, dispose of, and encumber real and personal property needed for its functions or operations;
- (h) To borrow money for the purpose of defraying district expenses, including, but not limited to, the funding of appropriate loss reserves, or for any other purpose deemed appropriate by the board;
- (i) To invest any moneys of the district in accordance with part 6 of article 75 of title 24, C.R.S.;

(j)

(I) To hire and set the compensation of a program administrator and to appoint, hire, retain, and set the compensation of other agents and employees and contract for professional services.

(II) The board may delegate any of the powers and duties of the district that specifically pertain to the establishment, development, financing, and administration of the program to any program administrator the district hires; except that the district shall not delegate the power to establish assessment units, the power to determine the method of calculating special assessments, or the power to issue special assessment bonds.

(k) In accordance with sections 32-20-106 to 32-20-108, to establish special assessment units, levy and collect special assessments on eligible real property

specially benefited by a renewable energy improvement for which the district made reimbursement or a direct payment, and issue special assessment bonds;

(l) To accept gifts and donations and apply for and accept grants upon such terms or conditions as the board may approve; and

(m) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to the district by this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(3) The district shall establish, develop, finance, and administer a new energy improvement program. However, the district may conduct the program within any given county only if the board of county commissioners of the county has adopted a resolution authorizing the district to conduct the program within the county. The district shall design the program to allow an owner of eligible real property to apply to join the district, receive reimbursement or a direct payment from the district, and consent to the levying of a special assessment on the eligible real property specially benefited by a new energy improvement for which the district makes reimbursement or a direct payment. The district shall establish an application process for the program that allows an owner of eligible real property to become a qualified applicant by submitting an application to the district and that may include one or more deadlines for the filing of an application. The application process must require the applicant to submit with the application a commitment of title insurance issued by a duly licensed Colorado title insurance company within thirty days before the date the application is submitted. The district may charge program application fees. In order to administer the program, the district, acting directly or through a program administrator or other agents, employees, or professionals as the district may appoint, hire, retain, or contract with, may aggregate qualified applicants into one or more bond issues and shall:

(a) Market the program to owners of eligible real property, encourage such owners to obtain the special benefits of completing new energy improvements to their property by providing more attractive and accessible means of funding the completion of new energy improvements, and accept and process program applications from any such owners who are qualified applicants;

(b) Specify the information to be included in a program application. The district shall require an owner of eligible real property who submits a program application to include, at a minimum, a postal address or electronic mail address at which the district may contact the owner, the name and postal or electronic mailing address of any person holding a lien against the eligible real property, and any information that the district requires to verify that the owner will complete a new energy improvement, verify the cost of completing the new energy improvement, determine the appropriate amount of reimbursement or a direct payment to be made to the applicant or a contractor after the new energy improvement has been completed, and estimate the value of the special benefit provided by the completed new energy improvement to the applicant's eligible real property.

(c) Establish such standards, guidelines, and procedures, including but not limited to standards of credit-worthiness for qualification of program applicants, as are necessary to ensure the financial stability of the program and otherwise prevent fraud and abuse;

(d) Encourage or require, as determined by the district, any qualified applicant to obtain an energy audit in order to ensure the efficient use of new energy improvement funding pursuant to this article;

(e) Inform prospective program applicants and qualified applicants of private financing options not provided by the district, including, as appropriate, home equity loans, home equity lines of credit, commercial loans, and commercial lines of credit that may, with respect to a particular applicant, represent viable alternatives for financing new energy improvements;

(f) Take appropriate steps to establish qualifications for the certification of contractors to construct or install new energy improvements; and

(g) Take appropriate steps to monitor the quality of new energy improvements for which the district has made reimbursement or a direct payment if deemed necessary by the board, measure the total energy savings achieved by the program, monitor the total number of program participants, the total amount paid to contractors, the number of jobs created by the program, the number of defaults by program participants, and the total losses from the defaults, and calculate the total amount of bonds issued by the district. On or before March 1, 2014, and on or before each subsequent March 1, the district shall report to the state, veterans, and military affairs committees of the general assembly, or any successor committees regarding the information obtained as required by this paragraph (g).

(h) Develop program guidelines governing the terms and conditions under which private third-party financing, other than that obtained through issuance of a district bond, is available to qualified applicants through the program and, in connection therewith, may serve as an aggregating entity for the purpose of securing private third-party financing for new energy improvements pursuant to this article; and

(i) In connection with the financing of new energy improvements either by third parties pursuant to paragraph (h) of this subsection (3) or district bonds and in consultation with representatives from the banking industry, counties, municipalities, and property owners, develop the processes to ensure that mortgage holder consent is obtained in all cases for all eligible real property participating in the program to subordinate the priority of such mortgages to the priority of the lien established in section 32-20-107.

(4) The district shall establish underwriting guidelines that consider program applicants' qualifications, credit-worthiness, home or commercial building equity, and other appropriate factors, including credit reports, credit scores, and loan-to-value ratios, consistent with good and customary lending practices, and as required in order for the district or third parties to obtain a bond rating necessary for a successful bond sale. The district shall also arrange for an appropriate loss reserve in order to obtain the necessary bond rating.

32-20-106. Special assessments - determination of special benefits - notice and hearing requirements - certification of assessment roll - manner of collection.

(1) The approval by the district of a program application shall establish the qualified applicant who submitted the application as a district member, include the qualified applicant's eligible real property within the boundaries of the district, entitle the district member to reimbursement or a direct payment, and, subject to the provisions of

subsection (3) of this section, constitute the consent of the district member to the levying of a special assessment on the district member's eligible real property in an amount that does not exceed the value of:

- (a) The special benefit provided to the eligible real property by the new energy improvement; or
- (b) The eligible real property.

(2) For the purpose of determining the amount of the special assessment to be levied on a particular unit of eligible real property within the district, "special benefit" includes, but is not limited to:

- (a) Repealed in 2013;
- (b) Any cost of completing a new energy improvement that is defrayed by reimbursement or a direct payment; and
- (c) Repealed in 2013;
- (d) Any acknowledged value of a new energy improvement to a district member's eligible real property set forth in the program application submitted by the district member.

(3)

(a) The district may levy a special assessment against eligible real property specially benefited by a new energy improvement based on the cost to the district of the new energy improvement. The district shall initiate the levy of any assessment by the adoption of a resolution of the board that sets the assessment, approves the preparation of a preliminary assessment roll, and sets a date for a public hearing regarding the assessment roll. The district shall prepare a preliminary assessment roll listing all special assessments to be levied. The district may post notice of the hearing on the assessment on any district internet web site and shall send notice that the assessment roll has been completed and notice of a hearing on the assessment roll no later than thirty days before the hearing date to:

- (I) Each district member at the postal address or electronic mail address, or both if both are specified, specified in the member's program application; and
 - (II) Each person, by first-class mail or electronic mail, who has a lien against a unit of eligible real property listed on the assessment roll.
- (b) The notice required by paragraph (a) of this subsection (3) shall specify:
- (I) The amount of the special assessment proposed to be levied on the unit of eligible real property owned by the district member or subjected to a lien by the lienholder to whom the notice is sent;
 - (II) That any complaints or objections that are made by a district member or lienholder in writing to the board, and filed in writing on or prior to the date of the hearing, will be heard and determined by the board before the passage of any resolution levying a special assessment; and
 - (III) The date when and place where the hearing will be held at which complaints or objections made in person will be heard.
- (c) Following the hearing required by paragraph (a) of this subsection (3) and notice pursuant to paragraphs (a) and (b) of this subsection (3), the board shall adopt a resolution resolving all complaints or objections made and levying the

special assessments. A district member or lienholder whose complaint or objection is denied by the board shall have thirty days from the date of the denial to appeal the denial to a court of competent jurisdiction. Thereafter, the complaint or objection shall be perpetually barred.

(4) The board shall prepare or cause to be prepared a district assessment roll in book form showing in suitable columns each unit of eligible real property assessed, the total amount of assessment, the amount of each installment of principal and interest if the assessment is payable in installments, and the date when each installment will become due. The assessment roll shall have suitable columns for use in case of payment of the whole amount or of any installment or penalty. The board shall deliver the assessment roll, duly certified, under the corporate seal, for collection to the treasurer of each county in which the district has assessed eligible real property. After delivery of the assessment roll, the district may reduce the amount of any special assessment with the consent of the owner of the eligible real property on which the special assessment is levied.

(5) All special assessments shall be due and payable within thirty days after the effective date of the assessing resolution without demand, but all such assessments may be paid, at the election of the owner, in installments with interest as provided in subsection (6) of this section; except that the board may provide that special assessments be due and payable at such alternate time as set forth in the assessing resolution. Failure of a district member to pay the whole special assessment within said period of thirty days shall be conclusively considered and held to be an election on the part of the district member to pay in installments.

(6) In case of an election to pay in installments, the special assessments shall be payable in two or more installments of principal, which shall be payable as prescribed by the board over a period of not more than twenty years, with interest in all cases on the unpaid principal. The number and amounts of payment of installments, the period of payment, and the rate and times of payment of interest shall be determined by the board and set forth in the assessing resolution. The times of payment of installments shall be the same as the times of payment for installments of property taxes as specified in section 39-10-104.5 (2), C.R.S.; except that special assessments may be payable at such alternate times as provided by the board in the assessing resolution.

(7) Failure to pay any installment on special assessments, whether of principal or interest, when due shall give the district the right to declare the delinquent installments due and collectible immediately, and upon such a declaration the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate established pursuant to section 5-12-106 (2) and (3), C.R.S., until the day of sale. At any time prior to the day of sale, the district member may pay the amount of all unpaid installments, with interest at the penalty rate set by the assessing resolution, and all costs of collection accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. A district member not in default as to any installment or payment may, at any time, pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal.

(8)

(a) Payment of special assessments may be made to a county treasurer at any time within thirty days after the effective date of the assessing resolution, and the county treasurer shall promptly forward all special assessment payments received

to the district. At the expiration of the thirty-day period, each county treasurer of a county that includes eligible real property in the district shall return the district assessment roll for the county to the board, therein showing all payments made thereon, with the date of each payment. The roll shall be certified by the board under the seal of the board and by the board delivered to each county treasurer, with the treasurer's warrant for its collection. The county treasurer shall receipt the roll, and all such rolls shall be numbered or identified by county for convenient reference.

(b) The owner of any divided or undivided interest in eligible real property assessed may pay the owner's share of any assessment, upon producing evidence of the extent of the owner's interest satisfactory to the treasurer having the roll in charge; except that the assessment lien shall remain on the entire property assessed until the entire assessment is paid, except as otherwise provided pursuant to section 32-20-107.

32-20-107. Special assessment constitutes lien - filing - sale of property for nonpayment.

(1)

(a) A special assessment, together with all interest thereon and penalties for default in payment thereof, and associated collection costs constitutes, from the date of the recording of the assessing resolution and assessment roll pursuant to subsection (2) of this section, a perpetual lien in the amount assessed against the assessed eligible real property and has priority over all other liens; except that:

(I) General tax liens have priority over district special assessment liens;

(II) A district special assessment lien has priority over preexisting liens only if each lienholder consents as specified in section 32-20-105 (3) (i) and each consent and the assessment lien are recorded in the real estate records of the county where the property is located. Before the recording of the assessment lien, the applicant must submit to the district:

(A) Written consent to the assessment by all individuals or entities shown on a commitment of title insurance as holders of mortgages or deeds of trust encumbering the applicant's property; and

(B) Evidence that there are no delinquent taxes, special assessments, or water or sewer charges on the property; that the property is not subject to a trust deed or other lien on which there is a recorded notice of default, foreclosure, or delinquency that has not been cured; and that there are no involuntary liens, including a lien on real property or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property; and

(III) Liens for assessments imposed by other governmental entities have coequal priority with district special assessment liens.

(b) Neither the sale of eligible real property in the district to enforce the payment of general ad valorem taxes nor the issuance of a treasurer's deed in connection with such a sale shall extinguish extinguishes the lien of a special assessment.

If assessed eligible real property is subdivided, the board may apportion the assessment lien in the manner provided in the assessing resolution.

(2) The district shall transmit to a county clerk and recorder of a county that includes eligible real property included in the district copies of the district's assessing resolution after its final adoption by the board and the assessment roll for recording on the land records of each unit of eligible real property assessed within the county as provided in article 30, 35, or 36 of title 38, C.R.S. The assessing resolution and assessment roll shall be indexed in the grantor index under the name of the district member and in the grantee index under the Colorado new energy improvement district. In addition, the county clerk and recorder shall file copies of the assessing resolution, after its final adoption by the board, and the assessment roll with the county assessor and the county treasurer. The county assessor is authorized to create separate schedules for each unit of eligible real property assessed within the county pursuant to the resolution. In assessing the value of eligible real property, the county assessor shall not take into account any increase in the market value of the eligible real property resulting from the completion of a new energy improvement.

(3) No delays, mistakes, errors, or irregularities in any act or proceeding authorized or required by this article shall prejudice or invalidate any final assessment, and such mistakes, errors, or irregularities may be remedied by subsequent filings, amending acts, or proceedings. A remedied assessment shall take effect as of the date of the original filing, act, or proceeding. If a court of competent jurisdiction sets aside any final assessment or if, for any other reason, the board determines it to be necessary to alter any final assessment, the board, upon notice as required in the making of an original assessment, may make a new assessment in accordance with the provisions of this article.

(4)

(a) In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell the assessed eligible real property tax lien defaulted upon for the payment of the whole of the unpaid installment of principal and interest. Advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate tax liens in default of payment of the general property tax.

(b) At any sale by a county treasurer of any eligible real property for the purpose of paying a special assessment, the board may purchase the property for the district without paying for the property in cash and shall receive certificates of purchase for the property in the name of the district. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessment installment in pursuance of which the sale was made. The board may thereafter sell the certificates at their face value, with all interest and penalties accrued, and assigned to the purchaser in the name of the district. The board shall credit the proceeds of the sale to the fund created by resolution for the payment of the assessments, respectively; except that, if the new energy improvements were financed under section 32-20-105 (3) (h), the board shall credit the proceeds of the sale to the private third party that financed the new energy improvements. If the district has repaid all special assessment bonds in full, the board may sell the certificates for the best price obtainable at

public sale, at auction, or by sealed bids in the same manner and under the same conditions as provided in paragraph (d) of this subsection (4). Such assignments are without recourse, and the sale and assignments operate as a lien in favor of the purchaser and assignee as is provided by law in the case of sale of real estate in default of payment of the general property tax.

(c) The board, as a purchaser, has the right to apply for tax deeds on certificates of purchase at any time after three years from the date of issuance of the certificates, and the deeds shall be issued as provided by law for issuance of tax deeds for the nonpayment of the general property tax.

(d) Cumulatively with all other remedies, the district, as the owner of property by virtue of a tax deed or of property otherwise acquired, in satisfaction or discharge of the liens represented by certificates of sale, may sell the property for the best price obtainable at public sale, at auction, or by sealed bids. A sale shall be held after public notice by the board to all persons having or claiming any interest in the eligible real property to be sold or in the proceeds of the sale by publication of the notice three times, a week apart, in a weekly or daily newspaper of general circulation within the county in which the property is located. The notice shall describe the property and state the time, place, and manner of receiving bids; except that the time fixed for the sale shall not be less than ten days after the last publication. The board may reject any and all bids. Any interested party, at any time within ten days after the receipt of bids for the sale of property, may file with the board a written protest as to the sufficiency of the amount of any bid made or the validity of the proceedings for the sale. If the protest is denied, the protestor, within ten days thereafter, shall commence an action in a court of competent jurisdiction to enjoin or restrain the board from completing the sale. If no such action is commenced, all protests or objections to the sale shall be waived, and the board shall then convey the property to the successful bidder by quitclaim deed.

(e) In addition to all other remedies, the district, as a holder of certificates of purchase, may bring a civil action for foreclosure thereof in accordance with article 38 of title 38, C.R.S., joining as defendants all persons holding record title, persons occupying or in possession of the property, persons having or claiming any interest in the property or in the proceeds of a foreclosure sale, all governmental taxing units having taxes or other claims against the property, and all unknown persons having or claiming any interest in the property. Any number of certificates may be foreclosed in the same proceeding. In such a proceeding, the district, as plaintiff, is entitled to all relief provided by law in actions for an adjudication of rights with respect to real property, including actions to quiet title.

(f) The board shall credit the proceeds of any sale of property to the appropriate special assessment fund; except that, if the new energy improvements were financed under section 32-20-105 (3) (h), the board shall credit the proceeds of the sale to the private third party that financed the new energy improvements. The district shall deduct from the appropriate special assessment fund the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure.

(5) When the district has sold or conveyed at a fair market value certificates of purchase or property that the district has acquired in satisfaction or discharge of special assessment

liens, the sales and conveyances are hereby validated and confirmed as against all parties having or claiming any interest in the property or sale proceeds.

32-20-108. Special assessment bonds - legal investment - exemption from taxation.

(1) The district shall issue special assessment bonds in an aggregate principal amount of not more than eight hundred million dollars for the purpose of generating the moneys needed to make reimbursement or a direct payment to district members and to pay other costs of the district. The board shall issue the bonds pursuant to a resolution of the board or a trust indenture, must not be secured by an encumbrance, mortgage, or other pledge of real or personal property of the district, and are payable from special assessments, other than those attributable to private third-party financing under section 32-20-105 (3) (h), and any other lawfully pledged district revenues unless the bond resolution or trust indenture specifically limits the source of district revenues from which the bonds are payable. The bonds do not constitute a debt or other financial obligation of the state. The board may adopt one or more resolutions creating special assessment units comprised of multiple units of eligible real property on which the board has levied a special assessment and may issue special assessment bonds payable from special assessments imposed within the entire district, other than those attributable to private third-party financing under section 32-20-105 (3) (h), or from special assessments imposed only within one or more specified special assessment units.

(2) Bonds may be executed and delivered at such times; may be in such form and denominations and include such terms and maturities; may be subject to optional or mandatory redemption prior to maturity with or without a premium; may be in fully registered form or bearer form registrable as to principal or interest or both; may bear such conversion privileges; may be payable in such installments and at such times not exceeding twenty years from the date thereof; may be payable at such place or places whether within or without the state; may bear interest at such rate or rates per annum, which may be fixed or vary according to index, procedure, or formula or as determined by the district without regard to any interest rate limitation appearing in any other law of the state; may be subject to purchase at the option of the holder or the district; may be evidenced in such manner; may be executed by such officers of the district, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which may be either of the chair of the board or of an agent of the district authenticating the same; may be in the form of coupon bonds that have attached interest coupons bearing a manual or facsimile signature of the chair or the agent; and may contain such provisions not inconsistent with this article, all as provided in the resolution of the board under which the bonds are authorized to be issued or as provided in a trust indenture between the district and any bank or trust company having full trust powers.

(3) Bonds may be sold at public or private sale at such price or prices, in such manner, and at such times as determined by the district, and the district may pay all fees, expenses, and commissions that it deems necessary or advantageous in connection with the sale of the bonds. The power to fix the date of sale of the bonds, to receive bids or proposals, to award and sell bonds, to fix interest rates, and to take all other action necessary to sell and deliver the bonds may be delegated to an officer or agent of the district. Any outstanding bonds may be refunded by the district pursuant to article 56 of title 11, C.R.S. All bonds and any interest coupons applicable thereto are declared to be negotiable instruments.

(4) The resolution or a trust indenture authorizing the issuance of the bonds may pledge all or a portion of any special fund created by the district, may contain such provisions for protecting and enforcing the rights and remedies of holders of any of the bonds as the district deems appropriate, may set forth the rights and remedies of the holders of any of the bonds, and may contain provisions that the district deems appropriate for the security of the holders of the bonds, including, but not limited to, provisions for letters of credit, insurance, standby credit agreements, or other forms of credit ensuring timely payment of the bonds, including the redemption price or the purchase price. The resolution or trust indenture shall contain a provision that states that the bonds do not constitute a debt or other financial obligation of the state, and the same or a similar provision shall also appear on the bonds.

(5) Any pledge of moneys or other property made by the district or by any person or governmental unit with which the district contracts shall be valid and binding from the time the pledge is made. The moneys or other property so pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of the pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the pledging party regardless of whether the claiming party has notice of the lien. The instrument by which the pledge is created need not be recorded or filed.

(6) No member of the board, employee, officer, or agent of the district, or other person executing bonds shall be liable personally on the bonds or subject to any personal liability by reason of the issuance thereof.

(7) The district may purchase its bonds out of any available moneys and may hold, pledge, cancel, or resell such bonds subject to and in accordance with agreements with the holders thereof.

(8)

(a) The state hereby pledges and agrees with the holders of any bonds, private third parties that have financed new energy improvements under section 32-20-105 (3) (h), and those parties who enter into contracts with the district pursuant to this article that the state will not limit, alter, restrict, or impair the rights vested in the district or the rights or obligations of any person with which the district contracts to fulfill the terms of any agreements made pursuant to this article. The state further agrees that it will not in any way impair the rights or remedies of:

(I) The holders of bonds until the bonds have been paid or until adequate provision for payment has been made; or

(II) The private third parties that have financed new energy improvements under section 32-20-105 (3) (h).

(b) The district may include the provisions specified in paragraph (a) of this subsection (8) in its bonds or contracts with private third parties that have financed new energy improvements under section 32-20-105 (3) (h).

(9) Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any moneys within their control in any bonds issued under this article. Public entities, as defined in section 24-75-601 (1), C.R.S., may invest public funds in bonds only if the bonds satisfy the investment requirements established in part 6 of article 75 of title 24, C.R.S.

(10) Bonds shall be exempt from all taxation and assessments in the state. In the resolution or indenture authorizing bonds, the district may waive the exemption from federal income taxation for interest on the bonds. Bonds shall be exempt from the provisions of article 51 of title 11, C.R.S. The board may elect to apply any or all of the provisions of the "Supplemental Public Securities Act", part 2 of article 57 of title 11, C.R.S.

32-20-109. Credit towards demand-side management goals for public utilities.

For any gas utility or electric utility for which the public utilities commission has developed expenditure and natural gas savings targets pursuant to section 40-3.2-103, C.R.S., or established energy saving and peak demand reduction goals pursuant to section 40-3.2-104, C.R.S., the commission shall determine the extent to which the marketing, promotional, and other efforts of the utility have contributed to energy efficiency improvements funded by the district. To the extent that the commission finds that the utility's efforts have created energy savings, the commission shall allow the utility to count the related energy savings towards compliance with the gas utility's expenditure and natural gas savings targets or with the electric utility's energy savings and peak demand reduction goals, as applicable, using any method deemed appropriate by the commission.