

### What You Will Learn About in this Legal Update:

- SDA Conference
- New I-9 Form Goes into Effect September 18, 2017
- Public Construction Contracting: Minimum Requirements
- Service Animals at Public Facilities
- Enlarging a Special District Board from 5 to 7 Members

### SDA Conference

We enjoy seeing many of you at the annual SDA Conference each September. We hope you will join us for the following presentations:



Wednesday, September 13

- Jim Collins, Unification: The Merging of Districts – How to Do It (Or Not)
- Evan Ela & Joe Norris, The Perils of Puddle Ownership
- Linda Glesne, Consolidation of Fire Services: A Study in Collaboration
- Bart Miller, Trustees Not Directors: The Differences Between Title 32 Special Districts and Library Districts

Thursday, September 14

- Bob Cole, *A Case Study in Protecting Colorado Enterprises' Authority in Setting Fees*
- Micki Mills, Prepare Yourself for the 2018 Election

Friday, September 15

- Bob Cole, Healthy Forests

### New I-9 Form Goes into Effect September 18, 2017

A new form of I-9 for employment verification was published in July by the U.S. Citizenship and Immigration Services. Employers may continue to use the old form (dated 11/14/16) through September 17 or begin to use the new form (with a revision date of 7/17/17) immediately. The penalty for paperwork errors related to the I-9 can be substantial, ranging from \$216 - \$2,156 per occurrence, so we recommend taking steps now to ensure you are in compliance by September 18, 2017.

So what has changed? Well, the new form looks a lot like the old one. Nonetheless, it does have some improved features worth pointing out, including adding the new name of the Department of Justice division where complaints related to I-9 issues may be made (now the Immigrant and Employee Rights Section). The most important changes are to the list of acceptable documents which may be produced by a prospective employee in List C. Here, the numbering for all of those documents (except for the Social Security Card) has changed, and also employers will notice a newly added allowable form, specifically including Form FS-240, "Consular Report of Birth Abroad."

### Public Construction Contracting: Minimum Requirements

There are truly only two seasons in Colorado, winter, and construction, and we are currently in the heart of another construction season. What's more, low interest rates and available public financing options have increased activity in the construction contracting field recently.



If you are considering a construction project, please note that the bidding, procurement, and construction contracting laws are different for special districts and municipalities and each project should be considered individually. In addition, contract requirements will vary based on the size and overall cost of the project, however, listed below are several basic concepts that you should ensure are addressed in each and every government construction contract:

- We highly recommend retaining an Owners Representative for each project. An Owners Representative could be a consultant, engineer, or staff member who is experienced with the construction industry and will oversee the project from inception to completion.
- Carefully consider which project delivery method is appropriate. There are many options (for example, Design/Build, Construction Manager at Risk, Integrated Project Delivery) and contract terms vary widely for each approach.
- Special District contracts over \$60,000 must be publicly noticed and bid, with very few limited exceptions. C.R.S. § 32-1-1001(1)(d)(I). Statutory cities are required to bid contracts over \$5,000. C.R.S. § 31-15-712. The bidding process and requirements vary significantly based on the type of organization and type of project so be cautious.
- The final executed contract must state that an appropriation of funds has been made that equals or exceeds the contract amount. C.R.S. § 24-91-103.6.
- And, the contract must include provisions governing the process for approval of change orders as specified by C.R.S. § 24-91-103.6.
- Ensure adequate types and limits for insurance are stated and include the owner as an "additional insured" on contractor's policies. Consider specifically whether the contractor or owner will be responsible for builder's risk insurance.
- Maximum retainage allowable is 5% of the contract price. C.R.S. § 24-91-103.

- Payment and performance bonds required for contracts over \$50,000. C.R.S. § 38-26-106.
- On contracts over \$50,000, the owner must publish notice of final settlement at least 10-days before making final payment on the contract. C.R.S. § 38-26-107.

Finally, please note that Colorado law defines a construction contract as “any agreement for building, altering, repairing, improving, or demolishing any public project of any kind.” C.R.S. § 24-92-102(2) (also C.R.S. § 38-26-101). Because of this quite broad definition, be certain to consider the construction contracting issues described above even in what may seem to be smaller or mainly service-oriented contracts, such as contracts for routine or annual maintenance work.

### Service Animals at Public Facilities

Service animals are generally allowed to accompany people with disabilities or the animal’s trainer wherever the public is normally allowed to go, including places of employment and activities conducted by a public entity. A “service animal” is defined by the Americans with Disabilities Act (ADA) as a dog (and, in some cases, a miniature horse) that has been individually trained to do work or perform tasks for an individual with a disability. The Colorado Anti-



Discrimination Act (CADA) extends the right of public access to service-animals-in-training. So, if an employee or a member of the public brings his/her service animal or service-animal-in-training to one of your facilities, know that they are legally entitled to do so. However, if the animal becomes out of control and the handler does not take effective action to control it, or if the service animal is not housebroken, the animal may be excluded from the facility.

Service animals are to be distinguished from companion animals (aka “pets”), therapy animals, and emotional support animals, which do not have the same mandatory access and legal protections as service animals.

### Enlarging a Special District Board from 5 to 7 Members

The organizers of new Special Districts have long had the opportunity to decide whether the District’s Board of Directors will have 5 or 7 members and whether those members will be elected at-large or from districts with equal numbers of electors. The Special District Act has also historically allowed Districts to change the number of Directors from 5 to 7 when a District consolidates with another existing District. However, the law previously did not provide a procedure for existing Districts to increase Board size from 5 to 7 members.

To fill this “gap” in the law, HB 17-1198 passed this last legislative session establishes a procedure to allow an existing Special District with a 5-member Board to increase the number of members to 7. The new law requires adoption of a resolution by the Board

after consideration at a public meeting noticed by publication of the place, time, and date of the meeting and of the proposed increase in the number of Board members.

Public input must be allowed at the meeting. A certified copy of the approved resolution must be filed with the Board of County Commissioners or governing body of the municipality that approved the District's service plan. If neither the County Commissioners nor the governing body of the municipality notifies the District that it considers the Board member expansion to be a material modification of the District's approved service plan within 45-days, the Board will file the resolution with the District Court, and the Court will enter an ex parte order establishing the new number of the Board members. The Board must then record a certified copy of the Court order with the County Clerk and Recorder and file a copy with the State Division of Local Government.

The additional members of the Board are then elected at the next regular Special District election or at a special election called for the purposes of electing the additional directors, but following the date of recording the District Court order. One of the new Board members will serve until the next regular special district election and the other new Board member will serve until the second regular special district election. After these initial terms, future directors in these seats will serve for the standard 4-year terms.

If a Special District increases to a 7-member Board, the Special District is not allowed to reduce to a 5-member Board.

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