



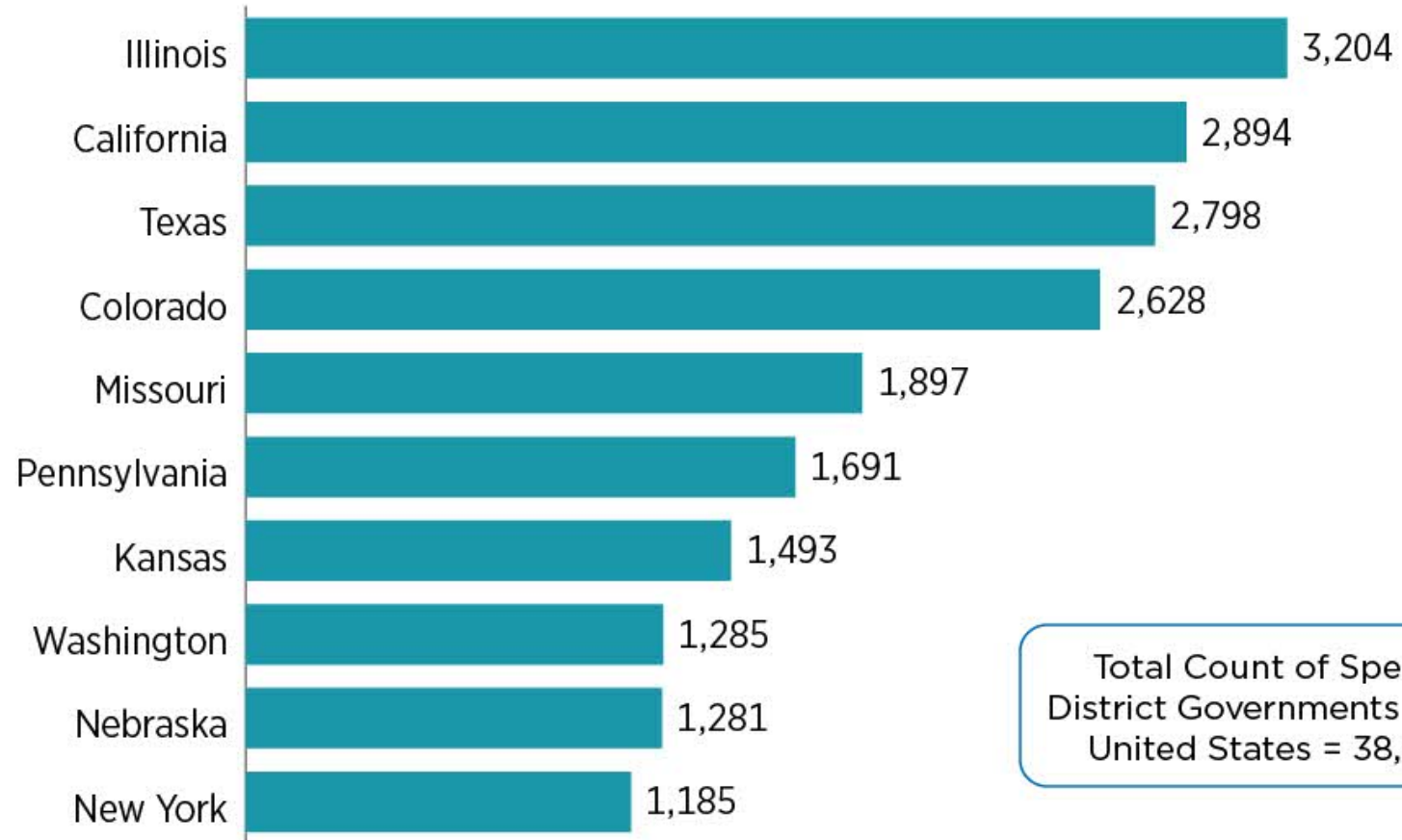
SPECIAL DISTRICTS: THE BUILDING BLOCKS OF DEVELOPMENT



ICENOGLE SEAVER POGUE

Shannon Smith Johnson

Top 10 States With Highest Count of Special District Governments: 2017



Total Count of Special District Governments in the United States = 38,542

Note: Data are not subject to sampling error. For information on nonsampling error and definitions, see www.census.gov/programs-surveys/gus/technical-documentation/methodology.html.

Source: U.S. Census Bureau, 2017 Census of Governments, Organization, Table 2, Local Governments by Type and State: 2017, available at www.census.gov/data/tables/2017/econ/gus/2017-governments.html, and 2017 Individual State Description Manual, available at www.census.gov/library/publications/2019/econ/2017isd.html.

WHAT IS A TITLE 32 SPECIAL DISTRICT?

- A special district is an independent unit of government formed under the Special District Act (C.R.S. §§ 32-1-101 *et seq.*)
- Districts are quasi-municipal corporations and political subdivisions of the State

Single Purpose District

- Water District
- Sanitary Sewer
- Fire District

Metropolitan District

Providing two or more specific services, including but not limited to:

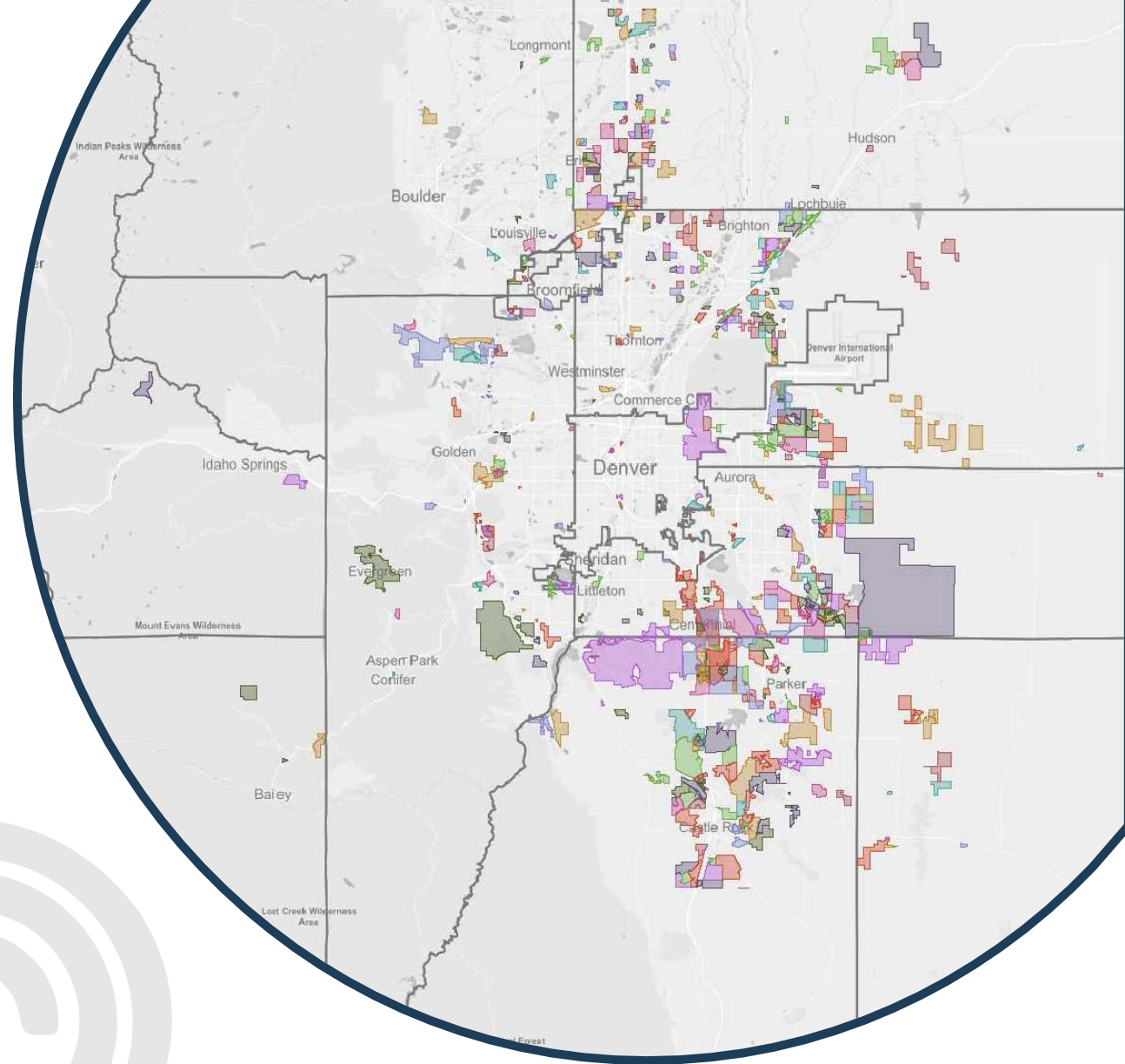
- Domestic Water
- Sanitary Sewer
- Roadways
- Irrigation Water
- Park and Recreation
- Transportation
- Traffic and Safety Controls

TITLE 32 SPECIAL DISTRICT HISTORY

Special districts were first authorized by the General Assembly in 1949 to provide certain municipal-type services in rural and unincorporated areas.

Total Active Local Governments:	4,213
Total Active Title 32 Districts:	2,624
Total Active Title 32, Article 1 Districts:	2,612

Department of Local Affairs (January 23, 2020)



WHY SPECIAL DISTRICTS?

The Facts of Growth

- Growth requires new or expanded public infrastructure
 - Roads
 - Water
 - Sewer
 - Parks
- New public infrastructure requires money
- Money doesn't grow on trees



Municipal/County Funding Constraints

- Pressure to keep taxes low
- Paying for existing services
- TABOR

... Growth must pay its own way

WHY SPECIAL DISTRICTS ARE TYPICALLY CREATED

FINANCIAL



- New infrastructure is funded by constituents within the district and not all municipal residents
- Public infrastructure can be financed over time with tax-exempt interest rates
- Well established revenue for long-term maintenance and operation
- Allows for permanent operation and maintenance of certain public improvements that are not dedicated to a municipality or other entity

- Property owners can deduct taxes paid to the district on their federal income tax returns
- District can manage architectural control and covenant compliance
- Sovereign immunity protections
- Planned communities and amenities
- Affordable housing



COMMUNITY

INTERSECTION OF DEVELOPMENT AND SPECIAL DISTRICTS

Development
Without a Special
District

- Conventional loans = ↑ borrowing costs
- ↑ Initial cost for homes
- ↓ Smaller projects
- ↓ Amenities/enhancements

WHAT DISTRICTS CAN DO



CONSTRUCT PUBLIC IMPROVEMENTS

Districts may finance and construct public improvements, subject to Title 32, municipal codes, land use regulations, development agreements, and service plans



OPERATE AND MAINTAIN PUBLIC IMPROVEMENTS

Districts may own, operate, and maintain public improvements not otherwise dedicated to a municipality or entity

GOVERNANCE OF THE DISTRICT

- Districts are independent governmental entities separate and distinct from the municipality
- Districts are governed by an elected board of directors
 - Regular elections are held in May of even-numbered years (will move to odd-numbered years in 2023)
 - Eligible electors of a district participate in elections
- A municipality is not liable for debt or other obligations of a district
- Districts are not governments of general jurisdiction
- Districts do not have police power
- Districts do not have land use regulatory authority



- Local Government Budget Law, C.R.S. §§ 29-1-101 *et seq.*
- Local Government Audit Law, C.R.S. §§ 29-1-601 *et seq.*
- Open Meetings Law, C.R.S. §§ 24-6-101 *et seq.*
- Local Government Election Code, C.R.S. §§ 1-13.5-101 *et seq.*
- Open Records Act, C.R.S. §§ 24-72-200.1 *et seq.*
- Public Bidding Requirements for Construction Contracts, C.R.S. § 32-1-1001(1)(d)(I)
- Colorado State Constitution

LAWS GOVERNING DISTRICT ACTIONS

Submit Service Plan

- The Service Plan limits the district's authority and sets parameters on district operations
- A county or municipality may approve, deny, or approve with conditions
- A county or municipality may require specific provisions within the Service Plan

Petition the District Court for Organization of the District

- Court holds a hearing and orders a formation election to be held

Election

- To organize district, elect initial board of directors, and authorize taxes and debt (TABOR)

Court Orders Organization of District if the Election Is Successful

FORMATION AND ORGANIZATION

DISTRICT SERVICE PLAN

District Service Plan

- Defines District services and powers
- Defines facility ownership and operation
- Sets the debt cap
- Sets the mill levy cap

Exhibits to Service Plan

- District infrastructure maps
- District boundary maps and legal descriptions
- Capital and O&M cost estimates
- Financial modeling

Districts operate pursuant to the powers and limits established in Title 32 and their Service Plan.

Service Plans are approved by the governing body of the Town, City, or County in which they are located

CONSTRUCTION OF CAPITAL IMPROVEMENTS

Constructed by the District

- District completes a public bidding process
- Construct capital improvements with District funds or Developer advances
- District assumes operation of capital improvements upon completion

Benefits

- Project materials are tax exempt
- Covered under governmental immunity
- Easier accounting of costs and reimbursement

Challenges

- Public bidding process takes roughly 2-3 weeks longer than the private bidding process

Constructed by the Developer

- Developer completes a public bidding process
- Construct capital improvements with Developer funds
- Developer provides District with proof of construction costs and District issues a reimbursement or promissory note
- District issues construction acceptance for capital improvements the District will operate and maintain

Benefit

- Additional flexibility with the selection of the Contractor

Challenge

- Accounting time is duplicated by Developer and the District

DISTRICT OPERATIONS



ADMINISTRATION

- Daily operations
- State and Local compliance
- Contract administration
- Board meetings



FACILITY CONSTRUCTION & OPERATION

- Construction of public infrastructure and facilities
- Facility operations:
 - Parks
 - Street landscaping
 - Open space
 - Irrigation systems

SOURCES OF REVENUE

PROPERTY TAX MILL LEVY



- Operations
- Debt
- Mill levy limitations:
 - Service Plan
 - TABOR
 - 5.5% limitation §§ 29-1-301 and 29-1-302, C.R.S.

- Utility Tap Fees
- Utility Use Rates
- System Development Fee
- Operation and Maintenance Fee
- Park and Recreation Fee



FEES, RATES, TOLLS AND CHARGES

TRANSPARENCY & HOMEBUYERS

- The information is there...but how do I find it?
 - Purchase Contract
 - Title Work/Real Property Records
 - Public disclosure document
 - Map of the district
 - Service Plan
 - Transparency notice
 - District websites
 - Property Tax Records
 - DOLA information
 - Annual budgets
 - Audits



TRANSPARENCY & HOMEBUYERS

Property Taxes in General

- Collected in arrears
- The mill levy is applied to the assessed valuation not the actual value or fair market value
 - Assessed Value = Actual Value x Residential Assessment Rate (RAR)
 - EXAMPLE: \$ 400,000 Actual Value x 7.15% RAR = \$ 28,600 Assessed Value
 - Re-Appraisals don't happen continually so there is a lag for new construction
- To determine the property tax, multiply the assessed value times the decimal equivalent of the total mill levy. A mill is equal to 1/1000 of a dollar. A tax rate is the mill levy expressed as a percentage. Thus 98.42 mills = 9.842 percent or .09842 as the decimal equivalent.
 - Taxes = Assessed Value x Mill Levy
 - EXAMPLE: \$ 28,600 Assessed Value x .09842 Mill Levy = \$ 2,814.81 Taxes

Special Districts

- Certify Mill Levies to the County by December 15th
 - Operations & Maintenance Mill Levy
 - Debt Service Mill Levy
- Review Current Property Tax Statements
- Overlapping Mill Levies
- Mill Levy Caps
- Disclosure Statements

PLACES TO FIND ANSWERS

- <https://dola.colorado.gov/lgis/lgActiveAlpha.jsf>
- https://demography.dola.colorado.gov/CO_SpecialDistrict/
- <https://www.sdaco.org/cora/sda-transparency/search>
- <https://www.sdaco.org/>
- <https://cdola.colorado.gov/special-districts>
- <https://metrodistricteducation.com/>
- County Assessor's Website

Questions?



ICENOGL SEAVR POGUE

SHANNON SMITH JOHNSON

SJOHNSON@ISP-LAW.COM