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Colorado Lawmakers Aim to Head Off Challenges to Metro Tax Districts That Worry Developers.

Top Colorado lawmakers introduced legislation Thursday that would prohibit legal challenges to the qualifications of special district electors in all past elections.

The proposal, if approved, would deem all of the special district electors created in special district elections up until April 21, 2016 and in the upcoming May 3 special district elections as eligible and would consider all of the elections since 1981 valid.

The bill is a reaction to a Colorado Court of Appeals ruling earlier this month in a case titled Landmark Towers Association vs. UMB Bank case, which upheld the position of a group of Landmark condo owners that the creation of the Marin Metropolitan District was created by ineligible electors and that legitimate property ownes were cut out of the process.

The ruling has put bond traders, bankers and real estate lawyers on edge and some metropolitan districts that were ready to sell bonds are now in a holding pattern as millions of dollars in transactions came grinding to a halt in the wake of the ruling.

Lawyers who helped craft Senate Bill 16-207 said the situation is urgent. The majority of the state's metropolitan districts were created using the same mechanism used in the Marin metro district. In that case, electors that voted to form the district were qualified because they took out low-down payment options on real estate.

The fear is that the court ruling could lead to lawsuits challenging the eligibility of special district electors in districts created long ago by that very mechanism.

Senate Bill 16-207, wouldn't allow those challenges. It says, "No district election conducted prior to April 21, 2016 may be contested on the ground that any person who voted at such election was not an eligible elector unless such a contest was invalidated prior to April 21, 2016."

The bill, backed by Senate President Bill Cadman, Majority Leader Mark Scheffel and House Speaker Dickey Lee Hullinghorst and House Majority Leader Crisanta Duran, has 10 days to get through the Senate and House before the legislative session ends.

Brian K. Matise, shareholder of Burg Simpson law firm who represented Landmark Towers Association, said he doesn't understand what the urgency is all about. The ruling, he said, is very narrow and wouldn't affect special districts created long ago.

In the Landmark case, the special district was created and approved by six people who were qualified as electors because they bought options on tiny pieces of a 10-by-10-foot parcel of land in the proposed district. To be eligible electors in that district, the six organizers executed option contracts to purchase a sliver of land within the district and agreed to pay $500 each. Then, they held an election in 2007 that created the metro district and authorized the district to issue bonds. But those six electors never paid for the land or paid taxes on the land.

In addition, a group of condo owners in Landmark Towers were lumped into the taxing district but they received no infrastructure benefit from the taxes collected and they were excluded from voting in the tax election, which the appeals court ruled was a violation of the Taxpayers Bill of Rights (TABOR).

Landmark Towers Association argued that the organizers' contracts were a sham. A lower court judge ruled that even though the organizers never paid the down payments for the so-called "director's parcels" or paid any taxes on the land, the option contracts were a legitimate way to create eligible electors for the special district.

But the Court of Appeals disagreed, ruling that the option contracts weren't sufficient to make the organizers eligible electors. The ruling listed six reasons why the electors in the Marin district were ineligible, including that they never paid property taxes.

"The ruling did not say that using option contracts to qualify electors is illegal," Matise said. "What it says, is that you can't have sham contract to qualify the directors. That is different."

But Dee Wisor. a Denver attorney that specializes in public finance issues, said the ruling is unclear on whether it applies only to the electors of the Marin metro district or could be applied to other metro district electors as well.

The ruling did, however, put an immediate chill on bond activity. Sam Sharp, managing director of D.A. Davidson & Co., a brokerage and investment banking firm, said he knows of at least seven transactions representing about $70 million in bond transactions that are on hold since the ruling.

Jan Bilsborrow, a board member of the Red Leaf Metropolitan District in Broomfield, said the district was refinancing its bonds to take advantage of lower interest rates for its taxpayers. The district sold $4.6 million in bonds. But one day later – the day of the Landmark court ruling – the transaction was suspended.

Bond counsel wouldn't sign off on the deal because of questions the ruling raised, she said.

"The projected savings will not happen unless something can change," Bilsborrow said.

The refinancing would have saved each of the 492 property owners in the Red Leaf district about $1,370 in property taxes over the life of the bonds, she said. The timing is unfortunate, she said.

"The original board was fiscally responsible and was doing what was needed for the infrastructure of our neighborhood," she said. "It was done exactly how it should have been done."

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by Monica Mendoza

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