

---

## MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C.

DATE: August 2, 2022

RE: Legal Status Report for August 8, 2022 Board Meeting

---

### **SB22-238 Property Tax Reduction Bill**

**Task:** Review SB22-238 as it relates to the Library District.

**Status:** This matter will be removed from the next status report

**Action:** None required.

### **Copyright Alternative in Small-Claims Enforcement Act “CASE Act”**

**Task:** Review opting out from the Federal CASE Act.

**Status:** The CASE Act was passed in 2020 to establish a small claims “court” for copyright infringement matters, known as the Copyright Claims Board (“CCB”). The CCB provides a new vehicle by which copyright holders may file infringement claims through a far quicker, more streamlined process. Historically, the only avenue for copyright holders to file infringement claims has been the difficult and costly process in federal court. Now, creators may attempt to defend their intellectual property through the traditional method or they may file a claim with the CCB. The limit for damages at the CCB is \$30,000.

Libraries and archives have been specifically granted the opportunity to preemptively opt-out of the CCB process. The opt-out protection extends to the acts of library employees operating within the course and scope of their employment. The preemptive opt-out was conceived to limit claims from “copyright trolls” who may abuse the streamlined CCB process. The opt-out election will maintain the status quo for libraries regarding copyright claims.

{00608068}

All that is required to opt-out is completion of an online form, including a certification that the library is qualified to opt-out. When completing the form, a Library Director, or other authorized individual, should list every library facility of the public entity. The opt-out form may be located at <https://ccb.gov/libraries-archives-opt-out/>.

**Action:** Consider opting out of the CCB, small claims tribunal.

### **Options for Funding Future Facilities Development**

**Task:** Summarize financing options the District may consider to fund future facilities development.

**Status:** The District has three options to pay for the construction of new libraries or the improvement of existing branches: (1) Cash out of reserve/budgeted funds; (2) General obligation bonds; or (3) Lease/purchase financing with or without certificates of participation. Each is summarized below. We recommend use of certificates of participation as a simple and cost-effective approach.

Cash on Hand: Availability of this “pay as you go” option depends on the scale of the project, the District’s financial position, and budget considerations for not only the next year, but in years to come. It is often best to utilize cash on hand to provide current services.

General Obligation Bonds: The most common form of government financing. Bonds are secured by the full faith credit and taxing power of the government issuer. Bonds offer low interest rates and are attractive to investors due to their double tax-exempt status. However, the issuance of debt through general obligation bonds requires an election as does the corresponding increase in taxes pursuant to Art. X, §20 of the *Colorado Constitution* (“**TABOR**”).

Lease/Purchase with or without Certificates of Participation (“COP”): Libraries are in a unique position to take advantage of sale/lease back financing. From a legal perspective, this method involves selling or leasing a property that is owned by the District. The funds received are used to buy new or improve old facilities. The property sold/leased by the District is leased back to the District which pays rent consisting of principal and interest to the investor[s]. The lease back to the District contains an option to purchase the property at the end of the lease for a nominal fee, often \$1.00. The District’s ability to obtain funds through a sale/lease back transaction depends on the value of the assets available for sale.

In other words, in its simplest form, the District:

1. Sells a piece of property; and,
2. Utilizes the proceeds to build or improve other property; and,
3. Continues to occupy the original property under a lease with an option to repurchase.

Lease/purchase financing does not constitute long-term debt obligations of the issuing authority, and is therefore exempt from laws that require voter approval through a TABOR election. The Colorado Supreme Court has determined this is not a “debt” because the District is not required to pay the rent. It may choose to default on the rent and let the investor(s) keep the building.

We recommend lease/purchase financing as the best option. Nearly all of our library district clients have financed facilities in this manner, and it is common throughout Colorado. However, we are ready to assist with any method the District may ultimately pursue.

**Action:** No action is required at this time.

#### **Executive Director Salary Survey Information**

**Task:** Obtain a copy of the State’s Executive Director Salary survey for budgeting process every September.

**Status:** On hold until September.

**Action:** None required.