Seter & Vander Wall, P.C.
ATTORNEYS AT LAW

KIM J. SETER
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MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C.

DATE: September 7, 2022

RE: Legal Status Report for September 12, 2022 Board Meeting

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.

There is no down side for a library to opt-out of this legislation. Doing so will limited the number of suits, whether nuisance or non-nuisance.

Opt-out can be accomplished by completing the on-line form located at https://ccb.gov/libraries-archives-opt-out/.

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Action: You asked me to consider any down sides to opting out. I cannot think of any and believe the opt out will avoid nuisance suits that are occasionally in vogue against libraries.

Proposed Motion: *I move the Board direct the Executive Director to complete the "opt-out" process and forms under the CASE Act through the Copyright Claims Board.*

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.

<u>Executive Director Salary Survey Information</u>

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.

<u>Colorado Family Medical Leave Insurance Program</u>

Task: Consider whether to “opt-out” of the Colorado Medical and Family Leave Act.

Status: Sabrina has advised that, in consultation with the City, there is likely no reason to participate in the FMLI program.

I have attached (1) a memorandum describing the Act, (2) a form notice to employees; and (3) a form Resolution to be used if the Board determines to opt out.

Action: **Schedule the Public Hearing required by the Colorado Code of Regulations to hear testimony re the Act.**

Annual Administrative Resolution

Task: There was a question as to whether the Board had adopted an annual administrative resolution for 2022 or elected new officers.

Status: The Board adopted the Resolution in January as required by statute. However, the annual consideration of officers is normally addressed in April. It does not appear that the election took place.

Action: **Consider a motion by any Trustee to appoint new officers or reappoint the current slate.**

Seter & Vander Wall, P.C.
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MEMORANDUM

TO: Poudre River Public Library Board of Trustees

FROM: Seter & Vander Wall, P.C., Kim J. Seter, Marissa Peck

DATE: September 12, 2022 Board Meeting

RE: Family and Medical Leave Insurance Program ("FAMLI") for Local Governments

I. INTRODUCTION TO FAMLI

The Colorado Paid Family and Medical Leave Insurance Act ("Act"), approved by Colorado voters at the November 3, 2020, is now Part 4 of Title 8, Article 13.3, of the Colorado Revised Statutes. The Act creates a new insurance program, run by the State of Colorado through its newly created FAMLI Division. It will be funded through contributions from Colorado employers and employees, and provides Colorado employees up to 12 weeks of paid leave within a 12-month period for specified family and medical leave purposes. FAMLI's employer / employee contribution requirements commence in 2023. Leave benefits become available in 2024.

Local governments may decline participation by resolution and must communicate any such declination to the FAMLI Program **by January 1, 2023**.

II. IMPLICATIONS & CONSIDERATIONS FOR LOCAL GOVERNMENTS

All local governments must comply with the FAMLI requirements, because the Act's definition of "employer" includes all political subdivisions. This means that each local government must register with the FAMLI Division and must make one of the following determinations:

1. Participate in FAMLI;
2. Decline ALL Participation in FAMLI; or
3. Decline EMPLOYER Participation in FAMLI.

III. DESCRIPTION OF FAMLI PARTICIPATION OPTIONS

As the January 1, 2023 deadline approaches, local governments should decide whether to participate in the program. Below is a description of each of the three options.

1. Participate in FAMLI: Beginning January 2023, a local government that does not decline participation is deemed to be a full participant, and must begin reporting to the FAMLI

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program and pay employee premiums. The premium is to be calculated on an annual basis by the State and may not exceed 1.2% of an employee's wage. For 2023, the premium is calculated as 0.9% of the employee's wages.

If an employer has 10 or more employees, the employer may either (a) pay the full premium, or (b) deduct up to 50% of the premium from an employee's wage and pay the remainder. If an employer has fewer than 10 employees, the premium requirement is cut in half (i.e. 0.45% of an employee's wage for 2023) and the employer may either (a) pay the premium with employer funds, or (b) deduct the premium from the employee's wages.

A local government that participates in the FAMLI program is obligated to participate for a minimum of three years, after which it may choose another option.

2. Decline ALL Participation in FAMLI: A local government may decline participation in the FAMLI program by following the statutory procedures outlined below. If a local government does not decline participation by the end of 2022, it is automatically enrolled in the program for a minimum of three years.

NOTE: As described in the third option below, an employee whose local government employer has declined participation may still participate in the FAMLI program in the same manner as an "independent contractor." A local government that declines all participation has no involvement with an employee's independent participation, but it must still comply with the Act's notice requirements.

A local government that does not decline participation and has no paid employees must still report to the FAMLI program on a quarterly basis, and thus, should consider declining participation to avoid this administrative burden.

A local government's declination expires after eight years, and must be renewed prior to expiration in order to remain out of the program. Once a local government has declined participation, the local government may join the program in any subsequent year and would then be required to participate for a minimum of three years.

3. Decline EMPLOYER Participation in FAMLI: A local government may decline participation but still assist any employee who chooses to independently participate in the FAMLI program by withholding and remitting the employee's premium. This would relieve such employee from having to independently calculate and pay the premium; the employer would retain responsibility for making the withholding calculations and remittance of the premiums.

IV. NEXT STEPS FOR PARTICIPATION OPTIONS

1. Full Participation. Local governments that do not provide the "notice of declination" to the FAMLI program by the end of 2022 are automatically enrolled in the program

for a minimum of three years. An online portal to administer participation in the program is expected to be available for use in the late Fall of 2022.

Participating local governments will need to register with the portal, and begin making quarterly reports and remit premium payments in 2023. The FAMLI program leave benefits will be made available to covered employees in January 2024.

Additional detailed information is available for participating local governments to assist in program administration, including required notices, quarterly reporting, premium calculation and payment, and administration of employee leave taken under FAMLI.

2. Declining All Participation. In order to decline participation, a local government must follow prescribed procedures:

a. Register with the online portal in Fall 2022 (once it becomes available). Even if it declines participation, a local government is required to register with the FAMLI Division's online portal.

b. Schedule a public hearing to give employees and the public the opportunity to submit comments on the matter.

    i. Note, the "public hearing" takes place as part of a scheduled regular or special meeting. It requires special notice as described in Section 2.c., below, but does not require a legal notice publication in the newspaper.

c. Provide two forms of notice that the local government will hold a public hearing and vote on whether decline participation:

    i. General notice to the public in the same manner as any other business that may come before the local government (i.e. providing due notice of the board meeting, and including the public hearing and consideration of the declination resolution as an agenda item notifying the public of its right to provide comment on the matter).

    ii. Written notice to employees, which must indicate the date, time and place of the regular or special meeting that the public hearing will be held, and that summarizes the program and vote process for declining participation. The notice must inform employees of their right to submit comments on the matter and the process for doing so.

d. Public hearing and Board vote to decline participation. This will occur at the noticed board meeting.

e. If the Board vote is in favor of declining participation, the local government must notify the FAMLI Division of the vote outcome.

i. This notice must be provided on the local government's letterhead and must indicate the date the vote was taken and the result of the vote.

f. Within 30 days of the vote, the local government must send employees individual written notice, including the impact on FAMLI coverage, or other paid family and leave insurance coverage. The notice must include, at a minimum:

i. An explanation of the differences between the benefits offered by the FAMLI program and any other paid leave offered by the local government.

ii. Identification of which employees, if any, are eligible for job protection under the federal Family and Medical Leave Act (FMLA) benefits or other local provisions where applicable (The federal FMLA is generally applicable to employers with 50 or more employees).

iii. Information regarding the right of employees to participate in the FAMLI program in the same manner as independent contractors.

g. Post FAMLI-created notice posters in a conspicuous and accessible place in each establishment where employees work (provide electronic communication or post in conspicuous place on local government website for remote workers).

h. Provide new-hires individual written notice of the FAMLI program.

3. Choosing to Assist Individual Employees Participating as Independent Contractors. Follow the procedures described above. Assist participating employees by calculating, withholding, and remitting such employee's premium to the FAMLI program.

V. SUMMARY OF THE ACT

The Colorado Paid Family and Medical Leave Act establishes an insurance program and a new Division of Family and Medical Leave Insurance to administer and fund paid leave. It establishes a State-run enterprise fund for receiving premiums and other revenue to fund administration of the FAMLI program.

All local governments must post notice regarding the Act at the workplace and provide personal notice to employees in writing. A participating local government may not retaliate or take an adverse action against an employee that exercises rights under the Act, and an employer can be subject to a fine of up to $500 per violation.

Paid leave is available to an employee that is a "covered individual" under the Act and for the following purposes:

- To care for a child during the first year after birth, adoption, or foster care placement;
- To care for oneself or family member if suffering from a "serious health condition";

- To address a need arising out of a family member's active duty or forthcoming duty in the armed forces; or
- To address a need for an employee or employee's family member that arises from being the victim of domestic violence, stalking, or sexual assault or abuse.

An employee may take up to 12 weeks of paid leave in hourly increments for the reasons set forth above, and an employee may take an additional 4 weeks of leave for a serious health condition related to a pregnancy or childbirth. The 12-month period where the leave can be taken begins upon an employee filing an application for the leave. When leave is foreseeable, an employee should provide its employer at least 30 days' notice. In all other cases the employee should provide notice as soon as practicable.

The paid leave consists of (a) 90% of an employee's weekly wage that is less than or equal to 50% of the State's average weekly wage and (b) 50% of an employee's weekly wage that exceeds 50% of the State's average weekly wage. However, any paid leave used prior to 2025 is capped at $1,100 per week.

NOTICE TO EMPLOYEES
OF
POUDRE RIVER PUBLIC LIBRARY DISTRICT

NOTICE PURSUANT TO § 8-13.3-122, C.R.S. AND 7 CCR 1107-2.6(A)(2), NOTIFYING DISTRICT EMPLOYEES OF THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM AND INVITING WRITTEN COMMENTS ON WHETHER TO PARTICIPATE IN THE PROGRAM

In November 2020, Colorado voters approved Proposition 118, codified in §§ 8-13.3-501, *et seq.*, C.R.S., establishing the Family and Medical Leave Insurance Program ("FAMLI") to provide Colorado workers paid leave for qualifying family and medical circumstances.

FAMLI will be funded by premiums paid by Colorado employers, employees, and, independent contractors that elect to participate in the in the program. FAMLI premium collection commences January 1, 2023 (employee benefits will be made available beginning in 2024).

FAMLI premiums for the year 2023 are 0.90% of each employee's wage. The premium will be changed in subsequent years depending on program needs but will not exceed 1.2% of each employee's wage.

An employer with less than ten employees must remit half of the full premium for each employee's wage (0.45% in 2023), and may (a) pay the premium in addition to an employee's wage or (b) deduct the premium from an employee's wage.

An employee that meets the "covered individual" definition provided in § 8-13.3-503(3), C.R.S., is entitled to FAMLI benefits commencing January 1, 2024. Covered individuals may take up to 12 weeks of paid aggregate family / medical leave (up to 16 weeks for pregnancy complications) in a 12-month period for:

- Birth, adoption, placement, care of a new child during first year after birth, adoption or foster care;
- Care for a family member with a "serious health condition" (including pregnancy);
- An employee's own "serious health condition" (including pregnancy);
- Exigency leave (active-duty military; post deployment or death); or
- Safe leave (employee or employee's family member is the victim of domestic abuse, stalking or sexual assault / abuse).

The FAMLI paid leave benefit provides a partial income replacement, which is calculated as follows: 90% of an employee's average weekly wage that equals or is less than half of

Colorado's average weekly wage, and if applicable, 50% of the portion of an employee's wage that exceeds Colorado's average weekly wage. However, the maximum weekly benefit prior to 2025 will be capped at $1,100.

FAMLI provides that any "local government" "employer", as defined by §§ 8-13.3-503(14), 29-1-304.5(3)(b), C.R.S. and § 8-13.3-502(8), C.R.S., may decline participation in the program upon a majority vote of its governing body.

An employee whose local government employer declines participation in the program may elect to individually participate in the program for a minimum of three years by registering with FAMLI and paying 50% of the premium (0.45% of wage in 2023).

The Board of Trustees of the Poudre River Public Library District has determined to hold a public hearing on whether to decline participation in the FAMLI program.

All District employees are invited to submit written comments and /or speak at the public hearing on whether to participate in the FAMLI program, which will be held at a public meeting on [add date] at [add time and place]. Written comments must be received no later than [add date and time] in order to be considered.

Informational Links:

https://famli.colorado.gov/ (FAMLI Program Homepage)

https://famli.colorado.gov/individuals-and-families/individuals-and-families-faqs (FAQ for Individuals and Families)

https://famli.colorado.gov/individuals-and-families/premium-and-benefits-calculator (Premium / Benefits Calculator)

https://famli.colorado.gov/sites/famli/files/documents/Paid%20Family%20and%20Medical%20Leave%20Insurance%20Act-%20CDLE.pdf (Paid Medical and Family Leave Act)

https://drive.google.com/file/d/11m3t1jyZxBgu8pF5FkB4-vuNQN9rzXrf/view (FAMLI Local Government Rules)

RESOLUTION OF THE BOARD OF TRUSTEES
OF
POUDRE RIVER PUBLIC LIBRARY DISTRICT

RESOLUTION NO. ______

DECLINING PARTICIPATION IN THE COLORADO PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

Recitals

Colorado voters approved Proposition 118, in November 2020 which was codified in §§ 8-13.3-501, *et seq.*, C.R.S., establishing the Family and Medical Leave Insurance Program ("FAMLI") to provide Colorado workers paid leave for qualifying family and medical circumstances.

FAMLI will be funded by premiums paid by Colorado employers, employees, and, independent contractors that elect to participate in the in the program with premium collection commencing January 1, 2023, and benefits beginning January 1, 2024.

FAMLI provides that any "local government" "employer", as defined by §§ 8-13.3-503(14), 29-1-304.5(3)(b), C.R.S. and § 8-13.3-502(8), C.R.S., may register with the program by January 1, 2023, and a local government employer that fails to register by January 1, 2023, will be deemed a participate in the program.

FAMLI provides in § 8-13.3-522, C.R.S., that a local government employer may decline participation in the program upon a majority vote of its governing body, provided the governing body first holds a public hearing on the matter with prior written notice to employees summarizing the program and vote process and giving employees opportunity to submit comments.

FAMLI also provides that, to avoid being subject to premium collection commencing January 1, 2023, a local government employer must register with the program and provide notice of a decision to decline participation by January 1, 2023.

Any local government employee whose employer declines participation may elect to participate in the FAMLI program as an individual and, a local government employer declining participation may elect to help facilitate its employees' participation by collecting and remitting the employee premiums.

The Board of Trustees of the Poudre River Public Library District ("District") held a public hearing at a public meeting held on [add date] at [add time and place], and District employees were provided written notice of the public hearing and opportunity to comment on the District's participation in the program.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE DISTRICT AS FOLLOWS:

1. The Board finds and determines that, with regard to the public hearing on the decision of whether to decline participation in FAMLI, notice was given and the hearing was conducted in accordance with FAMLI and the rules and regulations adopted by the Colorado Department of Labor and Employment.

2. The Board of Directors, acting for an on behalf of the District, hereby declines participation in the FAMLI program.

3. The District *will [will not]* facilitate premium collection and remittance for employees that elect to participate in the FAMLI program.

4. District management shall implement this Resolution consistent with FAMLI and the rules and regulations adopted by the Colorado Department of Labor and Employment.

5. Provided the Board does not subsequently elect to participate in the FAMLI program, the District's declination is effective for eight years from the date of this Resolution, and the Board will determine whether to continue declining participation in the FAMLI program prior to expiration of the eight-year period.

APPROVED AND ADOPTED this ___ day of ______________ 2022, by the Board of Trustees.

POUDRE RIVER PUBLIC LIBRARY DISTRICT

____
By:

Attest:

____
Secretary/Assistant Secretary