



HB 11-1218 (C.R.S. 30-20-1301) **Federal Mineral Lease Districts** **Frequently Asked Questions (FAQ)**

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INTRODUCTION

In the 2011 session of the Colorado General Assembly, HB11-1218 was passed with the intent of permitting counties to create a Federal Mineral Lease (FML) District for the purpose of transferring Federal Mineral Lease Direct Distribution payments to the FML District in order to maximize the amount of federal funding received by counties within the state.

The Department of Local Affairs, in our role as a source for technical assistance, has developed these Frequently Asked Questions to help local governments understand the statutory process of creating an FML District and any related interaction involving DOLA's administration of the annual Federal Mineral Lease Direct Distribution. All statutory citations refer to Colorado Revised Statutes as published in 2010 and amended in 2011 by House Bill 1218.

The Department of Local Affairs makes no claim that any Federal Mineral Lease (FML) District when created by a county will qualify as a "politically and financially independent service district", or that activities executed thereby are above challenge for federal PILT calculation purposes.

When an FML District is created, generally the county government that creates the district will re-direct its annual FML Direct Distributions per HB11-1218, (C.R.S § 34-63-103 (5.4)).

Analysis of FML Districts and their impact upon a county's PILT payment by US Department of Interior (DOI) may be required. Until a determination is made there is no certainty how an FML District will impact a county's PILT payment.

This document is provided for technical assistance only and does not constitute legal advice. For additional information please see the Department's Direct Distribution website at: <http://dola.colorado.gov/directdistribution>

1. How does a county create an FML District?

The primary aspects of creating an FML District are the passage of a resolution creating the district and the development of a service plan. The resolution creating an FML District must include the following:

- The name of the county creating the district.
- The names of any of the county's municipalities to be included in the district (see Question 3).
- A description of the boundaries of the district (see Question 2).
- The name of the district.
- The number of directors (3 or more, must be an odd number)

C.R.S § 30-20-1304(2)

Once a resolution is adopted by a county, the clerk of that county must transmit a certified copy of that resolution to any municipality named in the resolution and to the Executive Director of the Department of Local Affairs.

C.R.S § 30-20-1304(4)

After passage of the creation resolution, the FML District must develop and submit a service plan to the Board of County Commissioners that created the district, within ninety (90) days. That service plan must include a requirement for annual audits of the district's funding. Once the Service plan is approved forward a copy to the Department.

C.R.S § 30-20-1305

2. How are an FML District's boundaries determined?

The boundaries of an FML District at minimum should include all unincorporated area of the county creating the FML District, along with the boundaries of any municipalities that are included within the resolution creating the district. Statute does not specify if/how areas outside a county can be included into a district (see Question 5); we would suggest consulting with an attorney to discuss extraterritorial boundaries.

HB 11-1218 Colorado Legislative Council Fiscal Note

3. How is a municipality included in an FML District?

A municipality may enact an ordinance proposing to join an FML District before the adoption of the resolution creating the district by the county.

C.R.S § 30-20-1304(3)

4. How is the Board of Directors of the FML District organized?

The board of directors of the FML District is appointed by the BOCC of the county creating the district immediately following approval of the resolution creating the district. The Board of Directors must include at least one member of the county BOCC but members of the BOCC may not make up a majority of the FML District board (the number of directors is outlined in the resolution creating the district). The Board of Directors elects a president and a secretary from their membership. The term of service of a director is two years; however, the BOCC may remove any FML District director by a majority vote.

C.R.S § 30-20-1306

5. May two or more counties form a single FML District?

The formation documents of an FML District consist of a county resolution outlining specific aspects of the District (see Question 1) and the subsequently created Service Plan of the District. Generally a single county creates and adopts a resolution. HB11-1218 (C.R.S. 30-20-1307) specifically provides for cooperation or contracting by FML Districts.

Statute does not expressly explicate the method to create a multi-county District, but a multi-county District is not precluded. Consult with an attorney to determine what process and form of documents will be required to create a multi-county District. Possible issues to address when considering a multi-county district may include but are not limited to:

- Whether a contractual relationship establishes a separate legal entity.
- Number, method of creation, and approval process of FML District formation resolutions and District service plans.
- The length of term of the contract given FML district resolutions terminate after two years unless renewed by the Board of County Commissioners.
- Boundaries within resolution(s) creating FML District(s) to include multiple county boundaries.
- Membership and selection of the governing body of a multi-county entity.
- Ability to contract with governments other than FML Districts.
- Fully enumerated powers, rights, obligations, and responsibilities, financial and otherwise, of the contracting parties.
- Timeline for creation of multi-county entities (see Question 7).

6. What is required for the FML District to be reauthorized?

Two years after the date of passage of the resolution by the BOCC creating an FML District the district is automatically dissolved unless the BOCC passes a resolution at some time before that date to reauthorize the district. When a BOCC passes a reauthorization resolution, the resolution must be filed with the municipalities included within the district and with DOLA. If the Department does not receive a reauthorization resolution before the sunset date of the district, the FML Direct Distribution payment in that year will be paid to the county.

C.R.S § 30-20-1306

7. What is the timeline for a district?

Creation of a district must occur by June 1 of the year of desired FML Direct Distribution funding for the district (Except in 2011 the district must be created by June 30th).

C.R.S § 30-20-1304(1)

- The FML District's Federal Employer ID Number (FEIN) and W9 must be submitted to DOLA by July 15th.
<http://dola.colorado.gov/dlg/fa/dd/cerr.html#forms>
- Service plan must be submitted to the BOCC by at least August 30th. [C.R.S. 30-20-1305(2)(a)]
- FML Direct Distributions are made August 31st of each year.
- A budget is required to be adopted before any expenditure of funds can occur. All local governments must file a copy of their budget with DOLA. Annual Budget for the district is due to DOLA by January 31st of each year. [C.R.S. 29-1-113]
- Annual Audit due to the Office of the State Auditor by July 31st of each year. Annual Application for Exemption From Audit (for governments receiving less than \$500k) due by March 31st of each year. [C.R.S. 29-1-606]
- Reauthorizing resolution of the district by the county required on or before two years following the date of the resolution creating the district. [C.R.S. 30-20-1304(5)]

8. How does the district receive FML Direct Distribution Funds?

After a county creates an FML District and provides notification of such creation to the Department of Local Affairs, the district additionally will need to provide its Federal Employer Identification Number (FEIN) and a W9 to the Department by July 15th of the year in which the district is to receive the August 31st Annual FML Direct Distribution. Please note, the county will continue to receive its State Severance Tax Direct Distribution.

9. How does a district obtain a Federal Employer Identification Number (FEIN)?

The district will need to apply to the Internal Revenue Service, complete Form SS-4 (available on their website), and provide a copy of the county's adopted resolution forming the district. The IRS may also request a copy of or reference to the Colorado statute authorizing the creation of the FML district as a public corporation.

10. Will a municipality that has joined an FML District still receive their FML Direct Distribution Payment from DOLA?

Generally, yes. Unlike a county that creates an FML District, any municipality which joins an FML District will continue to receive their municipal FML Direct Distribution payment from DOLA pursuant to C.R.S. 34-63-102(5.4)(c)(II). HB11-1218 authorizes DOLA to distribute to a county or FML district. Therefore, only a county is

authorized to elect to have DOLA defer the county's FML Direct Distribution payment to an FML District.

C.R.S § 34-63-102(5.4)(c)

However, the existing statutory provision for DOLA's Executive Director to accept an annual Memorandum of Understanding (MOU) between a county and all municipalities located therein pursuant to C.R.S. 34-63-102(5.4)(c)(IV)(A) remains. Therefore, using both the provisions for an FML District and annual MOU, a municipality may indirectly defer its FML Direct Distribution to an FML District. However, such MOU must detail the calculation of the proportions to be distributed among the FML District and any municipalities that will still receive payment. Please see DOLA's Federal Mineral Lease and State Severance Tax Direct Distribution Program Guidelines for more information on MOU's.

DOLA's Federal Mineral Lease and
State Severance Tax
Direct Distribution Program Guidelines

11. Does an FML District have any impact on DOLA's administration of the State Severance Tax Direct Distribution?

There is no impact on the Department's Severance Tax Direct Distribution.

Resources:

- Internal Revenue Service Employer ID Numbers
 - This site provides information on procuring a Federal Employer ID Number.
 - <http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>
- Payment in Lieu of Taxes Calculation Background Information
 - This provides a summary of Department of Interior opinions and guidance on calculation of the annual PILT payment.
 - http://dola.colorado.gov/dlg/ta/fed_funds/index.html#rsc
- Payment in Lieu of Taxes FAQ
 - This site provides frequently asked questions about the federal PILT payment, including eligibility, deductions, and calculation information.
 - <http://www.doi.gov/pilt/faq.html>
- Colorado Department of Local Affairs
 - FML Direct Distribution: www.dola.colorado.gov/directdistribution
 - Federal PILT Payment Info: www.dola.colorado.gov/fedfunds