

## CHAPTER 166

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**EDUCATION - PUBLIC SCHOOLS**

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**SENATE BILL 03-158**

BY SENATOR(S) Tupa, Phillips, Arnold, Cairns, Fitz-Gerald, Groff, and Tapia;  
also REPRESENTATIVE(S) Pommer, Madden, Plant, Weissmann, Paccione, and Romanoff.

**AN ACT****CONCERNING THE SALE OF PROPERTY OF A SCHOOL DISTRICT.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 22-45-112, Colorado Revised Statutes, is amended to read:

**22-45-112. Sale of assets.** (1) EXCEPT AS AUTHORIZED BY SUBSECTION (2) OF THIS SECTION, if lands, buildings, or lands and buildings are sold by a school district, the proceeds, less the costs, of such sale shall be deposited in and expended from either the bond redemption fund or the capital reserve fund, or both such funds of the school district, as determined by the board of education. This provision shall apply also to the proceeds from any insurance which may accrue as a result of fire, explosion, or other casualty when such insurance proceeds cannot be used in an advantageous manner to repair the property to which the damage occurred.

(2) (a) PRIOR TO JULY 1, 2005, A SCHOOL DISTRICT MAY SELL LAND, BUILDINGS, OR LAND AND BUILDINGS AND DEPOSIT IN AND EXPEND FROM ITS GENERAL FUND THE PROCEEDS, LESS COSTS, OF THE SALE IF:

(I) THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT DECLARES A FISCAL SHORTFALL EMERGENCY PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2);

(II) THE SCHOOL DISTRICT SELLS THE PROPERTY TO A LESSOR, INCLUDING BUT NOT LIMITED TO THE STATE TREASURER PURSUANT TO SECTION 22-54-110 (2) (d), WHO, AT THE TIME OF THE SALE, LEASES ALL OF THE PROPERTY BACK TO THE DISTRICT PURSUANT TO A LEASE-PURCHASE AGREEMENT THAT IS SUBJECT TO ANNUAL APPROPRIATION BY THE SCHOOL DISTRICT AND HAS A TERM OF NO MORE THAN ONE YEAR; AND

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(III) THE STATE TREASURER APPROVES IN WRITING THE TERMS OF THE SALE AND LEASE-PURCHASE AGREEMENTS.

(b) A BOARD OF EDUCATION OF A SCHOOL DISTRICT MAY DECLARE A FISCAL SHORTFALL EMERGENCY IF:

(I) THE DISTRICT EITHER:

(A) IS DENIED A LOAN BY THE STATE TREASURER PURSUANT TO SECTION 22-54-110; OR

(B) NOTIFIES THE STATE TREASURER THAT THE DISTRICT IS UNABLE TO REPAY A LOAN OBTAINED PURSUANT TO SECTION 22-54-110 IN THE SAME STATE FISCAL YEAR THAT THE LOAN WAS MADE;

(II) THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT HOLDS AT LEAST ONE PUBLIC HEARING, AFTER FULL AND TIMELY NOTICE TO THE PUBLIC, ON THE EXISTENCE OF A FISCAL SHORTFALL EMERGENCY; AND

(III) AT A PUBLIC MEETING HELD AFTER THE HEARING HELD PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), AT LEAST TWO-THIRDS OF THE MEMBERS OF THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT APPROVE A RESOLUTION DECLARING THE FISCAL SHORTFALL EMERGENCY.

**SECTION 2.** 22-54-110 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**22-54-110. Loans to alleviate cash flow management problems - lease-purchase agreements.** (2) (d) (I) A DISTRICT MAY SELL REAL PROPERTY TO THE STATE TREASURER PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH (d) IF:

(A) THE DISTRICT HAS BEEN DENIED A LOAN PURSUANT TO THE PROVISIONS OF THIS SECTION IN WHICH CASE THE FAIR MARKET VALUE OF THE PROPERTY SHALL BE EQUAL TO OR GREATER THAN THE AMOUNT OF THE PURCHASE PRICE; OR

(B) THE DISTRICT IS UNABLE TO PAY A LOAN BACK IN THE SAME STATE FISCAL YEAR IN WHICH THE LOAN WAS MADE IN WHICH CASE THE FAIR MARKET VALUE OF THE REAL PROPERTY SHALL BE EQUAL TO OR GREATER THAN THE OUTSTANDING BALANCE OF THE LOAN TO THE STATE TREASURER.

(II) SUCH SALE MAY ONLY BE MADE IF:

(A) AT THE SAME TIME OF THE SALE, THE STATE TREASURER LEASES BACK ALL OF THE PROPERTY TO THE DISTRICT PURSUANT TO A LEASE-PURCHASE AGREEMENT THAT IS SUBJECT TO ANNUAL APPROPRIATION BY THE SCHOOL DISTRICT;

(B) THE DISTRICT PAYS ANY LEGAL OR OTHER TRANSACTION COSTS INCURRED BY THE STATE TREASURER RELATED TO THE SALE OF THE PROPERTY AND THE LEASE-PURCHASE AGREEMENT; AND

(C) THE STATE TREASURER AGREES TO THE SALE OF THE PROPERTY AND THE

## LEASE-PURCHASE AGREEMENT.

(III) THE PROVISIONS OF PARAGRAPH (c) OF THIS SUBSECTION (2) SHALL NOT APPLY TO THE LEASE-PURCHASE AGREEMENT, AND NO LIEN SHALL ATTACH TO ANY DISTRICT TAX REVENUES IN ORDER TO SECURE THE DISTRICT'S LEASE PAYMENTS. THE LEASE-PURCHASE AGREEMENT SHALL NOT AUTHORIZE THE DISTRICT TO RECEIVE FEE TITLE TO THE PROPERTY THAT IS THE SUBJECT OF THE LEASE-PURCHASE AGREEMENT PRIOR TO THE EXPIRATION OF THE TERMS OF THE LEASE-PURCHASE AGREEMENT.

(IV) SECTIONS 24-82-102 (1) (b) AND 24-82-801, C.R.S., SHALL NOT APPLY TO THE LEASE-PURCHASE AGREEMENT.

(V) IF A DISTRICT DEFAULTS IN THE PAYMENT OF RENT REQUIRED BY THE LEASE-PURCHASE AGREEMENT, IT SHALL HAVE THIRTY DAYS TO CURE SUCH DEFAULT. IF AFTER THIRTY DAYS THE DISTRICT HAS NOT CURED THE DEFAULT AND IF THE DISTRICT REMAINS IN POSSESSION OF THE PROPERTY, THE STATE TREASURER SHALL RECOVER POSSESSION OF THE PROPERTY PURSUANT TO THE PROVISIONS OF ARTICLE 40 OF TITLE 13, C.R.S. IF A COURT ENTERS A JUDGMENT IN FAVOR OF THE STATE TREASURER AND ISSUES A WRIT OF RESTITUTION PURSUANT TO SECTION 13-40-115, C.R.S., THE STATE TREASURER SHALL LIQUIDATE THE PROPERTY TO THE BEST ADVANTAGE OF THE STATE.

**SECTION 3.** Article 36 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-36-111.5. Authority to invest in real property owned by a school district.** WHENEVER THERE ARE MONEYS IN THE STATE TREASURY THAT ARE NOT IMMEDIATELY REQUIRED TO BE DISBURSED, THE STATE TREASURER MAY, IN THE STATE TREASURER'S DISCRETION, INVEST SUCH MONEYS IN REAL PROPERTY OWNED BY A SCHOOL DISTRICT PURSUANT TO THE PROVISIONS OF SECTION 22-54-110 (2) (d), C.R.S. THE STATE TREASURER SHALL ENSURE THAT THE INVESTMENT IN REAL PROPERTY SHALL YIELD A FAIR AND EQUITABLE RETURN TO THE STATE; EXCEPT THAT THIS REQUIREMENT SHALL NOT APPLY TO AN INVESTMENT IN REAL PROPERTY THAT IS RELATED TO A LOAN AGREEMENT ENTERED INTO PRIOR TO JULY 1, 2003.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 2003