

CHAPTER 376

GOVERNMENT - STATE

HOUSE BILL 13-1274

BY REPRESENTATIVE(S) Hullinghorst, Court, Fields, Ginal, Labuda, Rosenthal, Young, Pabon;
also SENATOR(S) Kerr, Guzman, Hodge, Hudak, Jones, Kefalas, Nicholson, Steadman.

AN ACT

CONCERNING THE STATE BOARD OF LAND COMMISSIONERS' INVESTMENT IN COMMERCIAL REAL PROPERTY, AND, IN CONNECTION THEREWITH, GRANTING THE STATE BOARD OF LAND COMMISSIONERS THE AUTHORITY TO ENTER INTO LEASE-PURCHASE AGREEMENTS.

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

SECTION 1. In Colorado Revised Statutes, **amend** 36-1-100.3 as follows:

36-1-100.3. Definitions. As used in this article, unless the context otherwise requires:

(1) "COMMERCIAL REAL PROPERTY" MEANS REAL PROPERTY INTENDED TO GENERATE INCOME EITHER FROM CAPITAL GAIN OR RENTAL INCOME, SUCH AS OFFICE BUILDINGS.

(2) "LAND" MEANS ANY GROUND, SOIL, WATER, REAL PROPERTY, COMMERCIAL REAL PROPERTY, MINERALS, MINERAL RESOURCES, OR EARTH WHATSOEVER.

~~(3)~~ (3) "MINERALS" OR "mineral resources" means ANY VALUABLE INERT OR LIFELESS SUBSTANCE FORMED OR DEPOSITED IN ITS PRESENT POSITION THROUGH NATURAL AGENCIES AND WHICH IS FOUND EITHER IN OR ON THE SOIL OR ROCK OF THE EARTH, INCLUDING WITHOUT LIMITATION those commodities subject to regulation under articles 32, 32.5, 33, and 60 of title 34, C.R.S., including but not limited to oil, gas, coal, sand, gravel, and other minerals.

(4) "PERMANENT SCHOOL FUND" MEANS THE PUBLIC SCHOOL FUND CREATED IN SECTION 3 OF ARTICLE IX OF THE STATE CONSTITUTION, WHICH IS THE SAME AS THE PUBLIC SCHOOL FUND DESCRIBED IN SECTION 22-41-102, C.R.S.

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

(5) "REAL PROPERTY" MEANS BUILDINGS, STRUCTURES, FIXTURES, AND IMPROVEMENTS ON LAND, AND EVERY ESTATE, INTEREST, PRIVILEGE, TENEMENT, EASEMENT, RIGHT-OF-WAY, AND OTHER RIGHT IN LAND, LEGAL OR EQUITABLE, INCLUDING LEASEHOLD INTERESTS.

(6) "STATE BOARD OF LAND COMMISSIONERS" OR "STATE BOARD" MEANS THE STATE BOARD OF LAND COMMISSIONERS DESCRIBED IN SECTION 36-1-101.5.

(7) "STATE SCHOOL LANDS" MEANS AN ENDOWMENT OF LAND ASSETS HELD IN A PERPETUAL, INTERGENERATIONAL PUBLIC TRUST FOR THE SUPPORT OF PUBLIC SCHOOLS.

SECTION 2. In Colorado Revised Statutes, 36-1-116, **amend** (1) (a) and (2) (a) as follows:

36-1-116. Disposition of rentals, royalties, and timber sale proceeds.

(1) (a) (I) Except for proceeds and payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., and except as provided in subparagraph (II) of this paragraph (a), proceeds received by the state for the sale of timber on public school lands, LEASE PAYMENTS AND RENTAL PAYMENTS FOR SAID LANDS, rental payments for the use and occupation of the surface of said lands, and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands shall be credited to the public school income fund for distribution as provided by law.

(II) (A) Except as provided in sub-subparagraph (B) of this subparagraph (II), for the 2010-11 state fiscal year and each state fiscal year thereafter, the proceeds received by the state for the sale of timber on public school lands, LEASE PAYMENTS AND RENTAL PAYMENTS FOR SAID LANDS, rental payments for the use and occupation of the surface of said lands, and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands other than proceeds, rentals, and payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be credited to the permanent school fund and shall become part of the principal of the permanent school fund.

(B) For the 2012-13 state fiscal year, all proceeds received by the state for the sale of timber on public school lands, LEASE PAYMENTS AND RENTAL PAYMENTS FOR SAID LANDS, rental payments for the use and occupation of the surface of said lands, and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands other than proceeds, rentals, and payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be transferred to the state public school fund created in section 22-54-114, C.R.S.

(2) (a) Proceeds received by the state for the sale of timber on lands belonging to any of the state trust funds other than on public school lands, LEASE PAYMENTS AND RENTAL PAYMENTS FOR SAID LANDS, rental payments for the use and occupation of the surface of said lands, and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands shall be credited to the proper trust income fund.

SECTION 3. In Colorado Revised Statutes, **add** 36-1-118.5 as follows:

36-1-118.5. Lease-purchase agreements for commercial real property - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE STATE BOARD OF LAND COMMISSIONERS LACKS A CONSISTENT MECHANISM TO MAKE INVESTMENTS IN LARGE, ECONOMICALLY VIABLE COMMERCIAL REAL PROPERTY HOLDINGS;

(b) THE STATE COULD OPERATE MORE EFFICIENTLY IF REASONABLY PRICED, WELL-SITUATED LEASE SPACE WERE AVAILABLE;

(c) THE STATE BOARD OF LAND COMMISSIONERS CAN GENERATE REASONABLE AND CONSISTENT REVENUES FOR THE STATE SCHOOL LANDS BY ACQUIRING COMMERCIAL REAL PROPERTY AND LEASING SPACE TO STATE AGENCIES AND OTHER TENANTS; AND

(d) IT IS THE GENERAL ASSEMBLY'S INTENT THAT ANNUAL PAYMENTS ON LEASE-PURCHASE AGREEMENTS THAT THE STATE BOARD OF LAND COMMISSIONERS INSTRUCTED THE STATE TREASURER TO ENTER INTO PURSUANT TO THIS SECTION BE MADE SOLELY FROM THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND WITH TRANSFERS FIRST FROM COMMERCIAL REAL PROPERTY REVENUES, SECOND FROM THE RESERVE ESTABLISHED IN THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND, AND, IN THE EVENT OF ANY SHORTFALL, FROM THE STATE BOARD OF LAND COMMISSIONERS INVESTMENT AND DEVELOPMENT FUND.

(2) (a) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-82-801, C.R.S., THE STATE BOARD OF LAND COMMISSIONERS MAY INSTRUCT THE STATE TREASURER TO ENTER INTO LEASE-PURCHASE AGREEMENTS ON BEHALF OF THE STATE SCHOOL LANDS FOR THE ACQUISITION, CONSTRUCTION, RENOVATION, AND IMPROVEMENT OF COMMERCIAL REAL PROPERTY THAT THE BOARD WILL THEN OFFER AS LEASE SPACE FOR STATE AGENCIES OR OTHER TENANTS ONLY IF:

(I) THE STATE BOARD OF LAND COMMISSIONERS HAS REVIEWED THE LEASED SPACE NEEDS FOR STATE AGENCIES WITH THE DEPARTMENT OF PERSONNEL;

(II) THE STATE BOARD OF LAND COMMISSIONERS HAS EVALUATED THE PROJECT WITH THE ASSISTANCE OF THE DEPARTMENT OF PERSONNEL AND THE OFFICE OF STATE PLANNING AND BUDGETING AGAINST THE CAPITOL COMPLEX MASTER PLAN IF THE PROJECT IS RELATED TO CAPITOL COMPLEX LEASED SPACE NEEDS;

(III) THE PROJECTED ANNUAL RENT COSTS OF THE STATE AGENCIES THAT WILL BE

LOCATED IN THE PROPERTY PLUS ANY CURRENT RENTAL PAYMENT OR RENTAL PAYMENT PROJECTED TO BE RECEIVED FROM OTHER NONSTATE AGENCY TENANTS FOR EACH FISCAL YEAR DURING THE MAXIMUM TERM OF THE PROPOSED LEASE-PURCHASE AGREEMENT WILL EXCEED THE ANNUAL LEASE-PURCHASE PAYMENT FOR THE PROPERTY;

(IV) A FINANCIAL PLAN FOR THE LEASE-PURCHASE TRANSACTION THAT INCLUDES THE ITEMS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (2) HAS BEEN APPROVED BY THE OFFICE OF STATE PLANNING AND BUDGETING AND REVIEWED AND RECOMMENDED BY THE CAPITAL DEVELOPMENT COMMITTEE OF THE GENERAL ASSEMBLY PURSUANT TO SUBSECTION (3) OF THIS SECTION;

(V) THE STATE BOARD OF LAND COMMISSIONERS APPROVES THE TERMS OF THE LEASE-PURCHASE AGREEMENTS AND ANY ANCILLARY AGREEMENTS;

(VI) THE STATE BOARD OF LAND COMMISSIONERS ENSURES THAT THE AGREEMENTS FOR THE LEASE-PURCHASE TRANSACTION ACCURATELY REFLECT THE FINANCIAL PLAN APPROVED BY THE OFFICE OF STATE PLANNING AND BUDGETING AND THE CAPITAL DEVELOPMENT COMMITTEE; AND

(VII) THE STATE CONTROLLER HAS APPROVED ALL AGREEMENTS PURSUANT TO SECTION 24-30-202, C.R.S.

(b) FOR PURPOSES OF THIS SUBSECTION (2), "ANNUAL RENT COSTS" MEANS BASE RENT TYPICALLY FOUND IN THE LEASED SPACE LINE ITEM IN THE GENERAL APPROPRIATION BILL PLUS ALL OPERATION, MAINTENANCE, AND RELATED COSTS PAID TO A LESSOR OR OTHER THIRD PARTY.

(c) THE FINANCIAL PLAN MUST INCLUDE ALL NECESSARY PARAMETERS OF THE LEASE-PURCHASE AGREEMENT, INCLUDING BUT NOT LIMITED TO LEASED-SPACE NEEDS, SUBLEASING AGREEMENTS, INCOME, EXPENSES, CAPITAL MAINTENANCE COSTS, INTEREST RATES, RESERVE REQUIREMENTS, AMORTIZATION, EXPECTED RETURN ON INVESTMENT, AND OVERALL BENEFIT TO THE PERMANENT SCHOOL FUND AS RELATED TO THE STATE BOARD'S DUTIES ENUMERATED IN SECTION 10 OF ARTICLE IX OF THE STATE CONSTITUTION. THE FINANCIAL PLAN MUST ALSO INCLUDE ANY OTHER FINANCIAL CONSIDERATION THAT THE OFFICE OF STATE PLANNING AND BUDGETING OR THE CAPITAL DEVELOPMENT COMMITTEE MIGHT REQUEST AFTER THEIR REVIEW OF THE FINANCIAL PLAN. THE STATE BOARD MAY UTILIZE THE SERVICES OF THE STATE'S FINANCIAL ADVISORS IN ORDER TO PREPARE THE FINANCIAL PLAN.

(d) THE STATE BOARD SHALL ADOPT A POLICY THAT AT MINIMUM SPECIFIES THAT LEASED SPACE IS AVAILABLE TO A STATE AGENCY THROUGH THE APPLICATION OF THIS SECTION WHEN SUCH A LEASED SPACE ARRANGEMENT IS MUTUALLY BENEFICIAL TO THE STATE BOARD AND THE STATE AGENCY SEEKING TO LEASE SPACE.

(e) THE STATE TREASURER SHALL ISSUE THE LEASE-PURCHASE AGREEMENTS AS SPECIFIED IN SECTION 24-36-121, C.R.S.

(3) IF THE OFFICE OF STATE PLANNING AND BUDGETING APPROVES THE FINANCIAL PLAN, IT SHALL SUBMIT THE FINANCIAL PLAN TO THE CAPITAL DEVELOPMENT

COMMITTEE OF THE GENERAL ASSEMBLY. THE CAPITAL DEVELOPMENT COMMITTEE SHALL REVIEW THE FINANCIAL PLAN AND REFER ITS RECOMMENDATIONS REGARDING THE FINANCIAL PLAN, WITH WRITTEN COMMENTS, TO THE STATE BOARD OF LAND COMMISSIONERS.

(4) (a) THE MAXIMUM TOTAL AMOUNT OF ANNUAL LEASE PAYMENTS OF PRINCIPAL AND INTEREST PAYABLE BY THE STATE DURING ANY FISCAL YEAR UNDER THE TERMS OF ALL OUTSTANDING LEASE-PURCHASE AGREEMENTS ENTERED INTO BY THE STATE TREASURER AS INSTRUCTED BY THE STATE BOARD PURSUANT TO THIS SECTION MAY NOT EXCEED THE LESSER OF:

(I) THE TOTAL AMOUNT OF ANNUAL LEASE PAYMENTS OF PRINCIPAL AND INTEREST REQUIRED TO BE PAID PER FISCAL YEAR ON ALL OUTSTANDING LEASE-PURCHASE AGREEMENTS SO LONG AS THE PRINCIPAL PORTIONS OF THE OUTSTANDING LEASE-PURCHASE AGREEMENTS DO NOT EXCEED FIFTY MILLION DOLLARS; OR

(II) FIVE MILLION DOLLARS PER FISCAL YEAR IN TOTAL ANNUAL LEASE PAYMENTS OF PRINCIPAL AND INTEREST REQUIRED TO BE PAID ON ALL OUTSTANDING LEASE-PURCHASE AGREEMENTS.

(b) THE TERM OF ANY LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE STATE TREASURER AS INSTRUCTED BY THE STATE BOARD PURSUANT TO THIS SECTION MAY NOT EXCEED THE SHORTER OF THE REMAINING USEFUL LIFE OF THE BUILDING OR TWENTY-FIVE YEARS.

(c) ANNUAL PAYMENTS ON LEASE-PURCHASE AGREEMENTS THAT THE STATE BOARD OF LAND COMMISSIONERS INSTRUCTED THE STATE TREASURER TO ENTER INTO PURSUANT TO THIS SECTION MUST BE MADE SOLELY FROM THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND WITH TRANSFERS FIRST FROM THE COMMERCIAL REAL PROPERTY OPERATING FUND CREATED IN SECTION 36-1-153.7, SECOND FROM THE RESERVE DESCRIBED IN PARAGRAPH (d) OF SUBSECTION (7) OF THIS SECTION, AND, IN THE EVENT OF ANY SHORTFALL, FROM THE STATE BOARD OF LAND COMMISSIONERS INVESTMENT AND DEVELOPMENT FUND CREATED IN SECTION 36-1-153.

(5) A LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE STATE TREASURER ON BEHALF OF THE STATE BOARD PURSUANT TO THIS SECTION SHALL PROVIDE THAT ALL PAYMENT OBLIGATIONS OF THE STATE UNDER THE AGREEMENT ARE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY AND THAT OBLIGATIONS ARE NOT DEEMED OR CONSTRUED AS CREATING AN INDEBTEDNESS OF THE STATE WITHIN THE MEANING OF ANY PROVISION OF THE STATE CONSTITUTION OR THE LAWS OF THE STATE CONCERNING OR LIMITING THE CREATION OF INDEBTEDNESS BY THE STATE AND DO NOT CONSTITUTE A MULTIPLE FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION.

(6) (a) A LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE STATE TREASURER ON BEHALF OF THE STATE BOARD PURSUANT TO THIS SECTION MAY CONTAIN SUCH TERMS, PROVISIONS, AND CONDITIONS AS THE STATE TREASURER DEEMS APPROPRIATE. THE PROVISIONS SHALL ALLOW THE BOARD, ON BEHALF OF THE STATE

SCHOOL LANDS, TO RECEIVE TITLE TO THE COMMERCIAL REAL PROPERTY THAT IS THE SUBJECT OF THE AGREEMENT ON OR PRIOR TO THE EXPIRATION OF THE ENTIRE TERM OF THE AGREEMENT, INCLUDING ALL OPTIONAL RENEWAL TERMS. SUCH LEASE-PURCHASE AGREEMENT MAY FURTHER PROVIDE FOR THE ISSUANCE, DISTRIBUTION, AND SALE OF INSTRUMENTS EVIDENCING RIGHTS TO RECEIVE RENTALS AND OTHER PAYMENTS MADE AND TO BE MADE UNDER THE AGREEMENT. SUCH INSTRUMENTS SHALL NOT BE NOTES, BONDS, OR ANY OTHER EVIDENCE OF INDEBTEDNESS OF THE STATE WITHIN THE MEANING OF ANY PROVISION OF THE STATE CONSTITUTION OR THE LAWS OF THE STATE CONCERNING OR LIMITING THE CREATION OF INDEBTEDNESS BY THE STATE. INTEREST PAID UNDER A LEASE-PURCHASE AGREEMENT, INCLUDING INTEREST REPRESENTED BY SUCH INSTRUMENTS, IS EXEMPT FROM COLORADO INCOME TAX.

(b) A LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE STATE TREASURER ON BEHALF OF THE STATE BOARD PURSUANT TO THIS SECTION MAY REQUIRE THE STATE TO PROVIDE INSURANCE; EXCEPT THAT NO INSURANCE IS AUTHORIZED THAT WOULD CAUSE THE ANNUAL LEASE-PURCHASE PAYMENT TO EXCEED THE ANNUAL RENT COSTS OF THE STATE AGENCIES PRIOR TO THE LEASE-PURCHASE AGREEMENT PLUS ANY RENT PROJECTED TO BE RECEIVED FROM OTHER NONSTATE AGENCY TENANTS.

(c) ANY PROVISION OF THE FISCAL RULES PROMULGATED PURSUANT TO SECTION 24-30-202 (1) AND (13), C.R.S., THAT THE STATE CONTROLLER DEEMS TO BE INCOMPATIBLE OR INAPPLICABLE WITH RESPECT TO A LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE STATE TREASURER ON BEHALF OF THE STATE BOARD PURSUANT TO THIS SECTION OR ANY ANCILLARY AGREEMENT MAY BE WAIVED BY THE STATE CONTROLLER OR HIS OR HER DESIGNEE.

(d) IF A LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE STATE TREASURER ON BEHALF OF THE STATE BOARD PURSUANT TO THIS SECTION IS EXECUTED, DURING THE TERM OF THE LEASE-PURCHASE AGREEMENT, MONEYS THAT AT THE TIME OF THE EXECUTION ARE APPROPRIATED TO A STATE AGENCY FOR RENTAL PAYMENTS SHALL BE TRANSFERRED TO THE COMMERCIAL REAL PROPERTY OPERATING FUND CREATED IN SECTION 36-1-153.7.

(7) (a) THE STATE BOARD OF LAND COMMISSIONERS LEASE- PURCHASE FUND IS HEREBY CREATED IN THE STATE TREASURY. THE PRINCIPAL OF THE FUND CONSISTS OF:

(I) TRANSFERS FROM THE COMMERCIAL REAL PROPERTY OPERATING FUND CREATED IN SECTION 36-1-153.7 AS DIRECTED BY THE STATE BOARD;

(II) TRANSFERS FROM THE STATE BOARD OF LAND COMMISSIONERS INVESTMENT AND DEVELOPMENT FUND CREATED IN SECTION 36-1-153 AS DIRECTED BY THE STATE BOARD; AND

(III) OTHER REVENUES AS REQUESTED BY THE STATE BOARD AND APPROVED BY THE GENERAL ASSEMBLY.

(b) ALL INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND ARE CREDITED TO THE FUND AND MAY NOT BE TRANSFERRED TO THE GENERAL FUND OR

ANY OTHER FUND AT THE END OF ANY FISCAL YEAR. ANY UNCOMMITTED FUND BALANCE AT THE END OF A FISCAL YEAR, NOT INCLUDING ANY AMOUNT HELD IN RESERVE AS REQUIRED IN PARAGRAPH (d) OF THIS SUBSECTION (7), IS TRANSFERRED TO THE PERMANENT SCHOOL FUND.

(c) MONEYS IN THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND ARE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY IN THE CAPITAL SECTION OF THE ANNUAL GENERAL APPROPRIATION ACT TO MAKE LEASE OR OTHER PAYMENTS REQUIRED BY LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO THIS SECTION.

(d) FOR EACH FISCAL YEAR COMMENCING ON OR AFTER JULY 1, 2014, A RESERVE CONSISTING OF TEN PERCENT OF THE PRINCIPAL OF ALL OUTSTANDING LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO THIS SECTION MUST BE MAINTAINED. THE RESERVE MAY ONLY BE EXPENDED UPON A SPECIFIC APPROPRIATION BY THE GENERAL ASSEMBLY TO MEET ANY LEASE-PURCHASE PAYMENTS REQUIRED BY LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO THIS SECTION IF THERE ARE INSUFFICIENT REVENUES TO COVER THE LEASE PAYMENT. THE RESERVE MUST BE REPLENISHED WITHIN THREE YEARS OF EXPENDITURE.

(e) THE STATE CONTROLLER SHALL, IN COOPERATION WITH THE STATE BOARD AND THE STATE TREASURER, ESTABLISH ACCOUNTS IN THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND AS NECESSARY TO ENSURE THE PROPER ACCOUNTING FOR ALL LEASE-PURCHASE TRANSACTIONS.

(8) NET REVENUE FROM THE DISPOSAL OF THE COMMERCIAL REAL PROPERTY ORIGINALLY ACQUIRED THROUGH A LEASE-PURCHASE AGREEMENT AUTHORIZED IN THIS SECTION SHALL BE REINVESTED IN LAND PURSUANT TO THE PROVISIONS OF SECTION 36-1-124.5.

(9) (a) (I) NO LATER THAN NOVEMBER 1, 2013, AND NO LATER THAN EACH NOVEMBER 1 THEREAFTER, THE STATE BOARD SHALL PRESENT A FINANCIAL REPORT REGARDING THIS SECTION TO THE JOINT BUDGET COMMITTEE AND TO THE LEADERSHIP OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY.

(II) THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JULY 1, 2023.

(b) THE STATE AUDITOR SHALL CONDUCT OR CAUSE TO BE CONDUCTED A PERFORMANCE AUDIT OF THE LEASE-PURCHASE PROGRAM AUTHORIZED BY THIS SECTION. THE STATE AUDITOR SHALL SUBMIT FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS RESULTING FROM THE PERFORMANCE AUDIT TO THE MEMBERS OF THE LEGISLATIVE AUDIT COMMITTEE, THE MEMBERS OF THE JOINT BUDGET COMMITTEE, AND THE MEMBERS OF THE CAPITAL DEVELOPMENT COMMITTEE, OR ANY SUCCESSOR COMMITTEES, NO LATER THAN TWELVE MONTHS AFTER THE ISSUANCE OF THE FIRST LEASE-PURCHASE AGREEMENT.

SECTION 4. In Colorado Revised Statutes, 36-1-129, **amend** (2) (a) and (3) as follows:

36-1-129. Bonds. (2) (a) In leasing state lands for nonagricultural purposes, the state board of land commissioners shall require of the lessee a bond or damage deposit securing the state against loss of rents or other loss or waste, or occupation of the land for more than thirty days after the cancellation or expiration of the lease of the lessee, unless the lessee becomes the purchaser of the land, and THE STATE BOARD OF LAND COMMISSIONERS SHALL RETAIN ALL INTEREST EARNED ON SUCH A BOND OR DAMAGE DEPOSIT WHILE HELD BY THE STATE BOARD OF LAND COMMISSIONERS. In no case shall the lessee be allowed to cut or use more timber than is necessary for the improvement of the land or for fuel for the use of the family of the lessee; and the cutting and hauling of timber to sawmills, to be sawed on shares, is expressly prohibited.

(3) All bonds, damage deposits, and earnest moneys collected pursuant to this article that the state board of land commissioners has deemed forfeited or required for remediation activities shall be credited to the financial warranty account of the state land board trust administration fund created in section 36-1-145 (2) (e). Moneys in the account, INCLUDING INTEREST EARNED ON THE FORFEITED BONDS, DAMAGE DEPOSITS, AND EARNEST MONEYS DEPOSITED IN THE ACCOUNT, are continuously appropriated for the remediation or other activities on the affected property.

SECTION 5. In Colorado Revised Statutes, 36-1-153, **amend** (2) as follows:

36-1-153. Investment and development fund. (2) (a) Moneys in the fund shall be used at the discretion of the state board of land commissioners to hire staff, contract for services, make purchases, MAKE ANNUAL PAYMENTS ON ANY LEASE-PURCHASE AGREEMENTS THE STATE BOARD INSTRUCTED THE STATE TREASURER TO ENTER INTO AS ALLOWED IN SECTION 36-1-118.5, and take such other actions as the state board deems appropriate to provide for the development of additional value-added benefit for the state's trust lands, including both portfolio enhancement and additional income. Such actions may include, but are not limited to, the rezoning, platting, master planning, or other development activities that increase the value of or rate of return from the state's trust lands.

(b) THE STATE BOARD OF LAND COMMISSIONERS SHALL NOTIFY THE STATE TREASURER IN WRITING OF THE AMOUNT THAT NEEDS TO BE TRANSFERRED FROM THE INVESTMENT AND DEVELOPMENT FUND TO THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND CREATED IN SECTION 36-1-118.5 (7), AND NO LATER THAN THIRTY DAYS AFTER RECEIPT OF SUCH NOTIFICATION, THE STATE TREASURER SHALL TRANSFER SUCH SUM TO THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND CREATED IN SECTION 36-1-118.5 (7).

SECTION 6. In Colorado Revised Statutes, **add** 36-1-153.7 as follows:

36-1-153.7. Commercial real property - commercial real property operating fund - created. (1) (a) THE COMMERCIAL REAL PROPERTY OPERATING FUND, REFERRED TO IN THIS SECTION AS THE "FUND", IS HEREBY CREATED IN THE STATE TREASURY AND CONSISTS OF ALL LEASE INCOME EARNED BY THE STATE BOARD OF LAND COMMISSIONERS FROM COMMERCIAL REAL PROPERTY. THE STATE BOARD OF LAND COMMISSIONERS SHALL CONTROL AND ADMINISTER THE FUND. THE STATE CONTROLLER SHALL, IN COOPERATION WITH THE STATE BOARD OF LAND

COMMISSIONERS AND THE STATE TREASURER, ESTABLISH ACCOUNTS IN THE FUND AS NECESSARY TO ENSURE THE PROPER ACCOUNTING FOR ALL COMMERCIAL REAL PROPERTY THAT THE STATE BOARD OF LAND COMMISSIONERS OWNS AND LEASES TO THIRD PARTIES. EACH ACCOUNT MUST CONSIST OF LEASE REVENUE, NOT INCLUDING ANY DAMAGE DEPOSITS AS ALLOWED IN SECTION 36-1-129, FOR THE COMMERCIAL REAL PROPERTY AS SEPARATED BY TRUST AND MUST ACCOUNT FOR ALL EXPENSES FOR THE COMMERCIAL REAL PROPERTY HELD BY EACH TRUST. MONEYS IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE STATE BOARD OF LAND COMMISSIONERS AND MAY BE USED TO CONTRACT FOR THE SERVICES OF A THIRD-PARTY PROPERTY MANAGEMENT FIRM AS SPECIFIED IN SUBSECTION (2) OF THIS SECTION, AND FOR ANY OTHER ASSOCIATED PROPERTY MANAGEMENT AND OPERATING COSTS. MONEYS IN THE FUND MAY BE TRANSFERRED TO THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND CREATED IN SECTION 36-1-118.5 (7). THE STATE BOARD OF LAND COMMISSIONERS SHALL NOTIFY THE STATE TREASURER IN WRITING OF THE AMOUNT THAT NEEDS TO BE TRANSFERRED FROM THE FUND TO THE STATE BOARD OF LAND COMMISSIONERS LEASE-PURCHASE FUND. THE STATE TREASURER SHALL TRANSFER SUCH AMOUNT NO LATER THAN THIRTY DAYS AFTER RECEIPT OF SUCH NOTIFICATION. ALL UNENCUMBERED AND UNEXPENDED MONEYS IN THE FUND AT THE END OF EACH QUARTER IN EACH FISCAL YEAR IS DISTRIBUTED AS SPECIFIED IN SECTION 36-1-116.

(b) THE STATE CONTROLLER SHALL AUTHORIZE DISBURSEMENTS FROM THE FUND AS DIRECTED BY THE STATE BOARD OF LAND COMMISSIONERS ON RECEIPT OF A VOUCHER FROM THE STATE BOARD STATING THAT THE DISBURSEMENT IS TO ACCOMPLISH A PURPOSE SET FORTH IN SUBSECTION (2) OF THIS SECTION.

(2) (a) THE STATE BOARD OF LAND COMMISSIONERS MAY CONTRACT FOR THE SERVICES OF A THIRD-PARTY PROPERTY MANAGEMENT FIRM TO MANAGE ANY COMMERCIAL REAL PROPERTY. THE STATE BOARD OF LAND COMMISSIONERS SHALL SELECT THE THIRD-PARTY PROPERTY MANAGEMENT FIRM THROUGH A COMPETITIVE BID PROCESS. BIDS MUST BE EVALUATED USING STANDARD COMMERCIAL REAL PROPERTY MANAGEMENT CRITERIA.

(b) THE TERM OF ANY CONTRACT WITH A THIRD-PARTY PROPERTY MANAGEMENT FIRM THAT THE STATE BOARD OF LAND COMMISSIONERS ENTERS INTO PURSUANT TO THIS SUBSECTION (2) MAY NOT EXCEED THREE YEARS WITH AN OPTION TO RENEW FOR ONE ADDITIONAL YEAR.

(c) ANY PROCUREMENTS MADE BY THE THIRD-PARTY MANAGEMENT FIRM ON BEHALF OF THE STATE BOARD OF LAND COMMISSIONERS FOR THE MANAGEMENT OF COMMERCIAL REAL PROPERTY BY THE THIRD-PARTY MANAGEMENT FIRM AUTHORIZED IN THIS SUBSECTION (2) ARE EXEMPT FROM THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S.

(d) PURSUANT TO SECTIONS 24-36-103 AND 24-36-104, C.R.S., THE THIRD-PARTY MANAGEMENT FIRM MUST MAINTAIN LEASE REVENUE IT COLLECTS IN A DEPOSITORY AUTHORIZED IN SECTION 24-75-603, C.R.S., IN DISTINCT BANK ACCOUNTS FOR EACH TRUST.

(e) THE THIRD-PARTY MANAGEMENT FIRM MUST PRODUCE QUARTERLY MANAGEMENT REPORTS THAT DETAIL THE GROSS REVENUES AND EXPENSES FOR

EACH COMMERCIAL REAL PROPERTY. THE STATE BOARD OF LAND COMMISSIONERS SHALL PROVIDE A COPY OF SUCH MANAGEMENT REPORTS, AFTER ITS REVIEW, TO THE DEPARTMENT OF NATURAL RESOURCES' CONTROLLER. THE THIRD-PARTY MANAGEMENT FIRM SHALL DISBURSE REVENUES TO THE STATE NO LESS FREQUENTLY THAN ON A QUARTERLY BASIS TO COINCIDE WITH THE RECORDING OF REVENUES AND EXPENSES AS DIRECTED BY THE STATE CONTROLLER. THE REVENUES TRANSFERRED TO THE STATE SHALL BE NET OF ACTUAL EXPENSES FOR THE COMMERCIAL REAL PROPERTY. THE THIRD-PARTY MANAGEMENT FIRM MAY RETAIN SUFFICIENT CASH FOR THE WORKING CAPITAL NEEDS OF THE COMMERCIAL REAL PROPERTY.

SECTION 7. In Colorado Revised Statutes, 24-30-1403, **amend** (2) (b) as follows:

24-30-1403. Professional services - listings - preliminary selections. (2) (b) The requirements of paragraph (a) of this subsection (2) shall not apply to the state board of land commissioners, established in article 1 of title 36, C.R.S., in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153, C.R.S., OR THE COMMERCIAL REAL PROPERTY OPERATING FUND CREATED IN SECTION 36-1-153.7, C.R.S.

SECTION 8. In Colorado Revised Statutes, 24-30-1404, **amend** (7) (g) (II) as follows:

24-30-1404. Contracts. (7) (g) This subsection (7) shall not apply to:

(II) The state board of land commissioners, established in article 1 of title 36, C.R.S., in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153, C.R.S., OR THE COMMERCIAL REAL PROPERTY OPERATING FUND CREATED IN SECTION 36-1-153.7, C.R.S.

SECTION 9. In Colorado Revised Statutes, 24-101-105, **amend** (1) (a) (VI) as follows:

24-101-105. Application of this code - repeal. (1) (a) This code shall apply to all publicly funded contracts entered into by all governmental bodies of the executive branch of this state; except that this code shall not apply to:

(VI) The state board of land commissioners in connection with contract expenditures from the state board of land commissioners investment and development fund created in section 36-1-153 (1), C.R.S., OR THE COMMERCIAL REAL PROPERTY OPERATING FUND CREATED IN SECTION 36-1-153.7, C.R.S.;

SECTION 10. 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: June 5, 2013