

**STATE OF COLORADO
STATE BUILDINGS AND REAL ESTATE PROGRAMS
REAL ESTATE PROGRAMS POLICIES AND PROCEDURES MANUAL**

CHAPTER 11. STATUTORY AUTHORITY FOR ACQUISITION AND/OR DISPOSITION OF REAL ESTATE BY COLORADO STATE AGENCIES

Colorado Revised Statutes (CRS) allow each agency and educational institution, through its executive director, to direct the planning and management of real estate use and construction. Oversight of these processes initially occurs with program plans submitted to either the Governor's Office of State Planning and Budget (OSPB) for all executive branch agencies and by the Colorado Commission on Higher Education (CCHE) for all institutions of higher learning. These plans are then presented to the Capital Development Committee (CDC) of the Colorado General Assembly (GA) and the recommendations of the CDC are made to the Joint Budget Committee (JBC). In addition, separate permission must be obtained from the CDC when real property is acquired or disposed.

Executive Branch Agency Authorization

CRS §24-1-136.5 grants each executive director the following authority:

- (1) Prescribe uniform policies procedures and standards of space utilization in department facilities with the statutory exception [§24-30-1303(1)(h)] of standards of space utilization for office space. Further executive directors have the authority for the development and approval of department construction projects.
- (2) Review and approve master planning and facilities plan programming for all capital construction projects of the department on state-owned or state-controlled (e.g., long-term, 50 yr. lease) land however no capital construction shall commence except in accordance with an approved plan.
- (3) Ensure conformity of facilities master planning with approved department operational master plans.
- (4) Exempt any project which requires less than \$250,000 of state moneys from the requirements for master planning and program planning.
- (5) Request from division directors a five (5) year projection of capital development projects including estimated costs. The executive director shall determine whether a proposed project is consistent with operational master planning and facilities planning of the department and whether it conforms to space utilization standards pursuant to §24-1-136.5(1) as noted above and §24-30-1303(1)(h)
- (6) (a) To annually establish a five-year capital improvements plan coordinated with department operational master plans and facilities plans and transmit same to OSPB with a recommended priority of funding capital construction projects; (b) GA will only appropriate funds for projects approved by executive director.
- (7) Approve any acquisition or utilization of real property conditioned upon expenditure of state-controlled funds or federal funds regardless of whether the acquisition is by lease, lease-purchase, purchase, gift or other.
- (8) Seek approval for facilities master and program plans for any capital construction project to be constructed, operated and maintained from the CDC and the JBC.

Higher Education Authorization

CCHE fulfills the function for the institutions of higher learning that OSPB fulfills as hereinbefore discussed for the executive branch agencies. Upon approval by CCHE of the program plans, OSPB is consulted for coordination with the Governor's office. CCHE presents the plans to the CDC. For leases the CCHE Leasing Policy also applies. (See Appendix.)

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Specific DPA Authority

CRS §24-82-101 grants DPA the control of the Capitol and Legislative Services Building and grounds and any other property the state may acquire adjacent thereto including supervision of the maintenance for the State Capitol Buildings Group, and [§2-2-321] space for the legislature and [§24-82-101] State Capitol preservation. The Capitol Complex Section of Central Services Division operates under this statute.

§24-82-102(1) grants DPA, through the Executive Director the following authority:

- (a) Acquire interests in real property for present or future use by the State. Such acquisition must be approved by recommendation of the CDC.
- (b) Lease purchase agreements require a GA act. [See §24-82-701 & §24-82-801]

§24-82-102(2)(a) With approval of Governor, may lease surplus state owned property to non-state lessees and with GA authorization, may allow a lessee to construct improvements that will be suitable for State use upon lease termination.

§24-82-103

- (1) Subject to appropriation, acquire land for off-street parking and construct parking facilities
- (2) Develop and implement parking assignment plan with rates comparable to private lots. Car pools are given preferential treatment and rates.

§24-82-702 Executive Director may execute a lease-purchase agreement and master lease program for real property.

State Buildings and Real Estate Programs Authority

By virtue of the following statutes, the Real Estate Programs within State Buildings and Real Estate Programs accomplishes the following with regard to real estate management:

§24-30-1303(1)

- a. Negotiate and execute leases with private lessors and state owned lands
- b. Negotiate and approve easements and rights-of-way
- h. Develop office space occupancy standards

§24-30-1303.5

- (1) Maintain an inventory of all state-owned lands and buildings except for CDOT and State Land Board (SLB). Maintain an inventory of all leases except SLB land leases. Correct any defects in order to vest marketable title in the state.
- (3) Establish procedure whereby all agencies report all acquisitions and dispositions of real property to aid in accurate maintenance of inventory.
- (5) Develop a performance criteria standard for state real property and perform an analysis upon selected property to assess whether to sell or otherwise dispose of such property and make recommendations to the CDC regarding various real property management strategies resulting from such analysis.

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General Statutes Applicable To All Agencies

§24-30-130l: (1) (a)(b)

Capital Construction means: Purchase of land . . . buildings. . . .

§24-30-1303 (1)(d)

The department (of personnel) shall: supervise and be responsible for the expenditure of funds appropriated by the general assembly for capital construction projects . . . at the institutions and agencies of the state.

§24-30-1303.5 (3)

. . . each state department, agency, or institution, including each state institution of higher education is required to report all acquisitions . . . and all dispositions to the Department (of Personnel).

§24-30-1303.5 (4)

. . . no acquisition or disposition of real property may be made and no funds or other valuable consideration may be given by a state department, agency, or institution for such acquisition, nor may any final document of conveyance of state property be transmitted to a purchaser, until a complete report on such transaction . . . has been filed with (personnel) and (personnel) has issued a written acknowledgment of the receipt of such report to the agency . . . nothing in this section shall be construed to give (personnel) any power to approve or disapprove any acquisition or disposition of real property.

§24-75-303 (2)

No appropriation for capital construction shall be made to or expended by any department, agency, or institution of the state which has not complied with the requirements of §24-30-1303.5, with respect to preparation and maintenance of a state inventory of real property and improvements and other capital assets.

§24-30-202 (5)(b)

Before any state department, institution, or agency enters into any option or agreement to purchase any real property . . . that has a total purchase price of more than one hundred thousand dollars, such department . . . shall contract with at least one but no more than three independent appraisers for an estimate of the value of such property. One copy of each such appraisal shall be attached to the option or contract for said purchase prior to the controller's approving the option or contract.

§24-1-136.5 (7)

Any acquisition or utilization of real property by a department which is conditional upon or requires expenditures of state-controlled funds or federal funds shall be subject to the approval of the executive director, regardless of whether the acquisition is by lease, lease-purchase, purchase, gift, or otherwise.

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AGENCY SPECIFIC REAL ESTATE STATUTES

Agriculture

§35-3-107 (3)

The department has the authority to obtain, by lease or purchase, such equipment, office accommodations, facilities . . . as it determines to be necessary or proper to carry out the provisions of this article. . . .

Corrections

§17-24-106 (1)(k)(I)

. . . the Division (of Correctional Industries) shall have the following powers: To purchase, lease, trade, exchange, or other-wise acquire, maintain, & dispose of real property. . . .

Human Services

§26-12-112 (1)

The state department may, . . . receive gifts, legacies, devises, and conveyances of property, real or personal, that may be made, given, transferred pursuant to a purchase and sale, or granted to the state department for state nursing homes. The state department, with the approval of the Governor, shall make disposition of such property in the best interest of the state nursing homes under the control and supervision of the state department.

(2) All titles to real property and all improvements thereon shall be vested in the state, and the title deeds thereto and all insurance policies, certificates of water rights, and other evidences of ownership to the real property or improvements of said nursing home shall be deposited with the state department.

(3) No payment shall be made out of the state treasury or otherwise for any real property described in this section until the title has been examined and approved by the Attorney General. Every such deed of conveyance shall be immediately recorded in the office of the proper county clerk and recorder and thereafter deposited with the state department.

§26-12-204 (1)

The Executive Director, with the approval of the State Board, shall sell any real property at the Colorado State Veterans Center declared to be surplus by the State Board to the highest bidder on such terms and conditions as are deemed appropriate by the Executive Director for not less than the appraised value thereof, as determined by an appraiser who is a member of the members appraisal institute (MAI), and to execute deeds of conveyance of such real property.

(2) Upon the sale of real property pursuant to subsection (1) of this section, the proceeds shall be deposited in the central fund and applied toward the retirement of any outstanding anticipation warrants.

Military Affairs

§28-3-106 (1)(s)(I)

If . . . any real estate which has been acquired for military purposes is unsuitable for military purposes the Adjutant General . . . with the approval of the Governor . . . has authority to . . .

dispose of such real estate, but, except as otherwise provided by subparagraph (II), of this paragraph (s),

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such real estate shall not be disposed of for less than its appraised value. The appraised value . . . shall be determined by an appraiser . . . selected by the Governor [and] . . . the proceeds of such disposition shall be placed in an account. . . . Said proceeds and any interest thereon shall be disbursed by authority of the Adjutant General. . . . Prior to disposing of any real property . . . the Adjutant General shall submit a report to the Capital Development Committee . . . (and) shall not complete any . . . disposition without considering any recommendations of the Capital Development Committee. . . .

(II) The Adjutant General may dispose of real estate . . . for less than its appraised value when the disposition is to an agency of state government.

Department of Natural Resources

Wildlife

§33-1-105 (1)

The (wildlife) commission has power to:

(a)(I) Acquire by gift, transfer, devise, lease, purchase, or long term operating agreement, such land . . . as . . . may be suitable. . . . Whenever the commission purchases any fee title interest in land . . . it shall follow . . . §33-1-105.5.

(b) Lease, exchange, or sell any . . . interest in land . . . which now are or may become surplus. . . . All sales of . . . lands shall be at public sale, and the commission has the right to reject any or all bids.

(3) In the event the commission plans to acquire the fee title to any real property or to acquire an easement for a period to exceed twenty-five years or at a cost to exceed one hundred thousand dollars . . . or to sell or otherwise dispose of the fee title to any real property which has a market value in excess of one hundred thousand dollars, the commission shall first submit a report to the Capital Development Committee which outlines the anticipated use of the real property, the maintenance costs . . . the current value . . . any conditions or limitation . . . and . . . the potential liability of the state. . . .The Capital Development Committee shall . . . make recommendations. . . . The commission shall not complete the transaction without considering the recommendations. . . .

§33-1-105.5

(1) Except as provided in subsection (7) of this section, before the commission purchases any fee title interest in real property . . . pursuant to 33-1-105 (1)(a), it shall solicit bid proposals. . . .

(7) The commission may decide not to use the bid process established . . . when the property being purchased is located in proximity to other property controlled by the division . . . or when the property . . . is offered through foreclosure, receivership, or auction, or when the property is purchased from another government entity. In the event the bid process is not used, the purchase of any fee title interest in real property shall be approved by the general assembly acting by bill.

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Parks and Recreation

§33-10-107

(1)(a) The board (of parks and outdoor recreation) has power to:

(a) Acquire by gift, transfer, lease, purchase, or long term operating agreement such land . . . as the director . . . deems necessary or suitable. . . .

(b) Lease exchange, or sell any . . . land . . . which now are or may become surplus. All sales of . . . lands shall be at public sale, and the board has the power to reject any or all bids.

(2) In the event the board plans to acquire the fee title to any real property at a cost to exceed one hundred thousand dollars or to acquire an easement for a period to exceed twenty-five years or at a cost to exceed one hundred thousand dollars . . . or to sell or dispose of such property, the board shall first submit a report to the Capital Development Committee which outlines the anticipated use . . . the maintenance costs . . . the current value . . . any conditions or limitations, the potential liability to the state. . . The Capital Development Committee . . . shall make recommendations. . . . The board shall not complete such transaction without considering the recommendations. . . .

Personnel

§24-82-102(1)(a)

On behalf of the state of Colorado and with the approval of the governor, the executive director of the department of personnel is authorized to acquire fee simple title, or any lesser interest therein, to any real property for present or future use by the state. Title to such property may be acquired by purchase, donation, or lease-purchase agreements or by the exercise of the power of eminent domain through condemnation proceedings in accordance with law from funds appropriated by the general assembly or from funds donated to the state for the purpose. In the event that the executive director plans to acquire any real property by any of the means authorized by this paragraph (a), except for easements or rights-of-way, or to sell or otherwise dispose of such property, the executive director shall first submit a report to the capital development committee which outlines the anticipated use of the real property, the maintenance costs related to the property, the current value of the property, any conditions or limitations which may restrict the use of the property, and, in the event real property is acquired, the potential liability to the state which will result from such acquisition. The capital development committee shall review the reports submitted by the executive director and make recommendations to the executive director concerning the disposition of the real property. The executive director shall not acquire, sell, or otherwise dispose of any real property without considering the recommendations of the capital development committee.

§24-82-101

The department of personnel shall have control of the capital and legislative services buildings and grounds . . . including assignment of all executive space owned and rented in the capitol buildings group, subject to legislative appropriation. . . .

§24-30-1303(1)(a)

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The Department shall: (a) with the approval of the Governor, negotiate and execute leases on behalf of state government for land, buildings and office or other space. . . .

Transportation

§43-1-210

(3)The Capital Development Committee has the authority to acquire by purchase, exchange or condemnation rights-of-way for future needs . . . and to lease any lands which are held for state highway purposes and are not presently needed therefore

(5)(a)(l)The Capital Development Committee is authorized subject to approving resolution of the Transportation Commission, to dispose of any property or interest therein in the manner specified in this section which, in the opinion of the Chief Engineer, is no longer needed for transportation purposes.

§43-1-212

The Capital Development Committee is authorized to enter into rental or leasehold agreements under which the Department shall acquire title to such buildings within a period not exceeding thirty years upon payment of the stipulated annual rentals.

STATUTES PERTAINING TO ALL OF HIGHER EDUCATION

§23-1-106 (1)

It is declared to be the policy of the General Assembly not to authorize or to acquire sites or initiate any program or activity requiring capital construction for state-supported institutions of higher education unless approved by the Commission (on Higher Education).

§26-1-106 (5)

The Commission (on Higher Education) shall approve plans for any capital construction project at any institution including a local district college, community college, or area vocational school, regardless of the source of funds. The Commission (on Higher Education) may except from the requirements for program and physical planning any project which will require less than two hundred fifty thousand dollars of State moneys.

§23-1-106 (8)

Any acquisition or utilization of real property by a state supported institution of higher education which is conditional upon or requires expenditures of state-controlled funds or federal funds, shall be subject to the approval of the Commission (on Higher Education), whether acquisition is by lease, lease-purchase, purchase, gift, or otherwise.

§23-1-106 (9)

Prior to approving any plan for a capital construction project to be constructed, operated, and maintained solely from student fees, auxiliary facility funds, wholly endowed gifts and bequests, research building revolving funds, or a combination of such . . . the Commission (on Higher Education) shall request and consider recommendations from the Capital Development Committee and the Joint Budget Committee.

HIGHER EDUCATION INSTITUTION SPECIFIC REAL ESTATE STATUTES

Colorado School Of Mines

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§23-41-104 (1)

The board of trustees has the control and management of the Colorado School of Mines and of the property belonging thereto. . . .

§23-41-112

All property, both real and personal, belonging to the Colorado School of Mines, shall be vested in the trustees. . . .

§23-41-123

All moneys which arise from the sale of lands, acquired other than by appropriation, belonging to the Colorado School of Mines . . . are placed under the exclusive control of the board of trustees of the said school.

Higher Education Institutions Controlled By The State Board of Agriculture

(Colorado State University, University of Southern Colorado, Ft. Lewis College)

§23-30-102 (1)

The State Board of Agriculture is a body corporate, capable of . . . taking, holding, and selling . . . real estate.

§23-30-102 (2.5)

The State Board of Agriculture has the power to sell, lease, or exchange real property, acquired other than by general fund appropriations . . . the ownership of which is vested in the State Board of Agriculture or any organization governed by it.

Colorado State University

§23-31-136

The State Board of Agriculture shall have the powers specified in §23-30-102 regarding the sale, lease, or exchange of real property . . . the ownership of which is vested in the State Board of Agriculture or Colorado State University. The State Board of Agriculture shall report all proposed sales, leases, or exchanges of such real property adjacent to or titled in Colorado State University to the Colorado Commission on Higher Education, which will review and approve or disapprove the proposed transaction pursuant to §23-1-106.

Fort Lewis College

§23-52-104 (e)

[T]he State Board of Agriculture has the power to: sell, lease, or exchange real property, .as specified in §23-30-102, the ownership of which is vested in the State Board of Agriculture or Fort Lewis College. The State Board of Agriculture shall report all proposed sales, leases, or exchanges of such real property adjacent to or titled in Fort Lewis College to the Colorado Commission on Higher Education, which will review and approve the proposed transaction pursuant to §23-1-106.

University of Southern Colorado

§23-55-107

The State Board of Agriculture shall have the powers specified in §23-30-102 regarding the sale, lease, or exchange of real property . . . the ownership of which is vested in the State Board of Agriculture or the University of Southern Colorado. The State Board of Agriculture shall report all

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proposed sales, leases, or exchanges of such real report property adjacent to or titled in University of Southern Colorado to the Colorado Commission on Higher Education, which will review and approve or disapprove the proposed transaction pursuant to §23-1-106. [See NOTE below.]

NOTE: §23-31-136, §23-52104 (e), and §23-55-107, all refer to any proposed disposals of real estate being reported to the Colorado Commission on Higher Education for review, and then approval or disapproval, in accordance with §23-1-106. Interestingly, §23-1-106 never mentions disposals of real property, only acquisitions. Any authority of the Colorado Commission on Higher Education to review for approval or disapproval the disposal of the property must be inferred from the Commission's general overall powers; no such authority is actually stated).

Institutions Governed By The Board Of Trustees Of The State Colleges In Colorado
(Metropolitan State College, Western State College, Adams State College)

§23-50-104

The trustees of the state colleges in Colorado have the power, and it is their duty . . . to provide suitable grounds and buildings, either by donation, purchase, or lease, for the use of said colleges. . . .

§23-50-107

The trustees . . . have the power to hold for the uses and purposes of said colleges such money, lands, or other property as may be donated. . . .

Mesa State College

§23-53-107

The trustees . . . have the power to take and hold, by gift, devise, or purchase . . . so much additional land as may become necessary. . . .

Metropolitan State College

NOTE: This institution is located mainly on the Auraria Center, which is controlled by the Auraria Board, pursuant to §23-70-101 et seq.

§23-70-104 (1)(a)

The Auraria Board has the duty to acquire, plan, construct, own . . . or dispose of all of the physical plant, facilities, buildings, and grounds in the Center (except that land owned at the Auraria Center by the Regents of the University of Colorado) . . . and such additional land and facilities as the Colorado Commission on Higher Education may . . . approve. . . .

§23-70-1:05 (1)(c)

The Auraria board . . . has the power to acquire . . . or dispose of property, both real and personal.

Institutions Governed By The State Board For Community Colleges and Occupational Education

(Arapahoe CC, CC of Aurora, CC of Denver, Front Range CC, Lamar CC, Morgan CC, Otero Jr. College, Pikes Peak CC, Pueblo CC, Red Rocks CC, Trinidad State Jr. College)

§23-60-202 (1)(b)

[T]he board (for SBCCCOES) has the authority . . . to construct, lease, or otherwise provide

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facilities needed. . . .

§23-60-202 (1)

To . . . hold . . . such lands as may be donated . . . or conveyed. . . .

END OF CHAPTER 11 POLICY/SBREP/STATUTORY AUTHORITY FOR ACQUISITION AND/OR DISPOSITION OF REAL ESTATE BY COLORADO STATE AGENCIES