First Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 03-0320.01 Bob Lackner **HOUSE BILL 03-1167**

HOUSE SPONSORSHIP

Weddig,

SENATE SPONSORSHIP

(None),

House Committees **Senate Committees**
State, Veterans, & Military Affairs

A BILL FOR AN ACT

CONCERNING THE CREATION OF A RIGHT OF ACTION AGAINST THE STATE BOARD OF LAND COMMISSIONERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Creates a private right of action in favor of taxpayers against the state board of land commissioners for claims arising out of any action or failure to take action on the part of the board in connection with the lease, sale, exchange, or other disposition of all of the lands held by the board as trustee. Defines "taxpayer" to mean a resident individual, partner, partnership, or corporation subject to the provisions of the state income tax.

Specifies that no taxpayer shall have a private right of action

against the state board of land commissioners unless the taxpayer is a resident of the county in which the land that is the subject of the action is located. Specifies that the remedies to be awarded to a successful plaintiff under the act are limited to declaratory or injunctive relief, including, without limitation, an order setting aside a sale, lease, exchange, or other disposition of land that is the subject of the action.

Requires that any action brought under the act be commenced within 180 days of the date of an agreement for the sale, lease, exchange, or other disposition of land that is the subject of the action, and in the district court for the judicial district in which all or any portion of the land that is the subject of the action is located.

Specifies that, as long as action or failure to take action giving rise to a claim under the act does not involve willful or intentional malfeasance or gross negligence, neither the members of the state board of land commissioners nor any person authorized by the board in an official capacity shall be held personally liable for any conduct undertaken pursuant to the statutory and constitutional provisions empowering the board.

Defines terms. Makes legislative findings and declarations.

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

SECTION 1. Article 1 of title 36, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

36-1-131.5. Private right of action - taxpayers - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) SECTION 9 (6) OF ARTICLE IX OF THE STATE CONSTITUTION EMPOWERS THE BOARD TO SERVE AS TRUSTEE FOR THE LANDS GRANTED TO THE STATE IN PUBLIC TRUST BY THE FEDERAL GOVERNMENT, LANDS ACQUIRED IN LIEU THEREOF, AND ADDITIONAL LANDS HELD BY THE BOARD IN PUBLIC TRUST.

(b) SECTION 10 OF ARTICLE IX OF THE STATE CONSTITUTION CHARGES THE BOARD WITH THE PRUDENT MANAGEMENT, LOCATION, PROTECTION, SALE, EXCHANGE, OR OTHER DISPOSITION OF ALL THE LANDS

HELD BY THE BOARD AS TRUSTEE IN ORDER TO PRODUCE REASONABLE AND CONSISTENT INCOME OVER TIME.

(c) IN THE CASE OF *BROTMAN V. EAST LAKE CREEK RANCH, L.L.P.*, 31 P.3d 886 (COLO. 2001), THE COLORADO SUPREME COURT HELD THAT A TAXPAYER HAS NO STANDING TO SUE TO ENJOIN THE OPERATION OF AN AGREEMENT BETWEEN THE BOARD AND A PURCHASER OF LAND MANAGED BY THE BOARD.

(d) TO THE EXTENT THE COLORADO SUPREME COURT HELD IN THE *BROTMAN* DECISION THAT NO TAXPAYER HAS STANDING TO CHALLENGE ANY ACTION OR FAILURE TO TAKE ACTION ON THE PART OF THE BOARD, THE GENERAL ASSEMBLY HEREBY REVERSES THAT DECISION TO THE EXTENT A TAXPAYER BRINGING A VALID CLAIM AGAINST THE BOARD IS ABLE TO SATISFY ALL OF THE REQUIREMENTS FOR A PRIVATE RIGHT OF ACTION AGAINST THE BOARD AS SPECIFIED IN THIS SECTION.

(e) IN THE ABSENCE OF A PRIVATE RIGHT OF ACTION AGAINST THE BOARD IN FAVOR OF TAXPAYERS IN SPECIFIED CIRCUMSTANCES, THERE MAY BE NO MEANINGFUL CHECK ON THE ABILITY OF THE BOARD TO PRUDENTLY MANAGE THE CONSIDERABLE ASSETS FOR WHICH IT SERVES AS TRUSTEE. ACCORDINGLY, GRANTING TAXPAYERS A PRIVATE RIGHT OF ACTION IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION WILL BETTER ENSURE THAT THE BOARD WILL FAITHFULLY DISCHARGE ITS FIDUCIARY DUTIES UNDER THE STATE CONSTITUTION AND THIS ARTICLE.

(f) THE PROVISIONS OF THIS SECTION SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE THEIR PURPOSE.

(2) FOR PURPOSES OF THIS SECTION:

(a) "BOARD" MEANS THE STATE BOARD OF LAND COMMISSIONERS CREATED IN SECTION 9 OF ARTICLE IX OF THE STATE CONSTITUTION.

(b) "RESIDENT INDIVIDUAL" HAS THE SAME MEANING AS SET FORTH IN SECTION 39-22-103 (8), C.R.S.

(c) "TAXPAYER" MEANS A RESIDENT INDIVIDUAL, PARTNER, PARTNERSHIP, OR CORPORATION SUBJECT TO THE PROVISIONS OF PART 1, 2, OR 3 OF ARTICLE 22 OF TITLE 39, C.R.S.

(3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A TAXPAYER SHALL HAVE A PRIVATE RIGHT OF ACTION AGAINST THE BOARD FOR CLAIMS ARISING OUT OF ANY ACTION OR FAILURE TO TAKE ACTION ON THE PART OF THE BOARD IN CONNECTION WITH THE LEASE, SALE, EXCHANGE, OR OTHER DISPOSITION OF ALL OF THE LANDS HELD BY THE BOARD AS TRUSTEE PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND SECTIONS 9 AND 10 OF ARTICLE IX OF THE STATE CONSTITUTION.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW:

(a) NO TAXPAYER SHALL HAVE A PRIVATE RIGHT OF ACTION AGAINST THE BOARD PURSUANT TO THIS SECTION UNLESS THE TAXPAYER IS A RESIDENT OF THE COUNTY IN WHICH ALL OR ANY PORTION OF THE LAND THAT IS THE SUBJECT OF THE ACTION IS LOCATED.

(b) REMEDIES TO BE AWARDED A SUCCESSFUL PLAINTIFF UNDER THIS SECTION SHALL BE LIMITED TO DECLARATORY OR INJUNCTIVE RELIEF, INCLUDING, WITHOUT LIMITATION, AN ORDER SETTING ASIDE A SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF LAND THAT IS THE SUBJECT OF THE ACTION.

(5) ANY ACTION BROUGHT UNDER THIS SECTION SHALL BE COMMENCED:

(a) WITHIN ONE HUNDRED EIGHTY DAYS OF THE DATE OF AN AGREEMENT FOR THE SALE, LEASE, EXCHANGE, OR OTHER DISPOSITION OF LAND THAT IS THE SUBJECT OF THE ACTION, AND NOT THEREAFTER; AND

(b) IN THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH ALL OR ANY PORTION OF THE LAND THAT IS THE SUBJECT OF THE ACTION IS LOCATED.

(6) AS LONG AS ACTION OR FAILURE TO TAKE ACTION GIVING RISE TO A CLAIM UNDER THIS SECTION DOES NOT INVOLVE WILLFUL OR INTENTIONAL MALFEASANCE OR GROSS NEGLIGENCE, NEITHER THE MEMBERS OF THE BOARD NOR ANY PERSON AUTHORIZED BY THE BOARD IN AN OFFICIAL CAPACITY SHALL BE HELD PERSONALLY LIABLE FOR ANY CONDUCT UNDERTAKEN PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND SECTIONS 9 AND 10 OF ARTICLE IX OF THE STATE CONSTITUTION.

SECTION 2. Effective date - applicability. (1) This act shall take effect October 1, 2003.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

(3) The provisions of this act shall apply to civil actions against the state board of land commissioners filed on or after the applicable effective date of this act.