

Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 08-0277.01 Bob Lackner

SENATE BILL 08-162

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SENATE SPONSORSHIP

**Boyd,** Bacon, Gibbs, Gordon, Groff, Johnson, Morse, and Tapia

HOUSE SPONSORSHIP

**Riesberg,** Ferrandino, Hodge, Levy, Madden, Merrifield, Peniston, and Soper

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Senate Committees

Health and Human Services

House Committees

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A BILL FOR AN ACT

101 CONCERNING INTEREST ON FIDUCIARILY HELD REAL ESTATE  
102 ACCOUNTS FOR THE PURPOSE OF FINANCING THE PROVISION OF  
103 AFFORDABLE HOUSING, AND, IN CONNECTION THEREWITH,  
104 CREATING THE FIDUCIARY EARNINGS FOR AFFORDABLE  
105 HOUSING FUND AND THE FIDUCIARY EARNINGS FOR AFFORDABLE  
106 HOUSING FOUNDATION.

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Bill Summary

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

Requires any closing and settlement services provider to pool and commingle trust money received from clients or beneficial owners in

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

connection with escrows and closings.

Requires the closing and settlement services provider responsible for the trust money, as early in the transaction as practicable, to give notice to all parties to the transaction that the trust money, absent direction from the parties, will be placed in a fiduciary account that may generate interest and that such interest, if any, will be donated to the fiduciary earnings for affordable housing foundation (foundation).

Specifies that the requirements of the act shall not apply to any escrow, settlement, or closing where a client or beneficial owner requests in writing that any interest earned on trust money be returned to the client or beneficial owner. Specifies that interest earned on trust money is the property of either the seller in connection with the sale of an interest in real property in the state or a borrower in connection with the refinancing of an interest in real property in the state.

Except for trust money placed in a commingled account, specifies the type of deposit or investment vehicle into which trust money may be deposited.

Specifies the requirements of the act do not apply to money otherwise being collected for the purpose of funding either the Colorado association of realtors housing opportunity foundation or the Colorado lawyer trust account foundation.

At least once each quarter, requires the financial institution in which a commingled account is maintained to pay the interest earned on the account, less any service charges of such institution, to the fiduciary earnings for affordable housing foundation (foundation) to enhance the availability of affordable housing throughout the state.

Requires the commissioner to adopt such rules as are necessary for the effective administration and implementation of the act.

Specifies the type of financial institution in which trust money affected by the act is required to be deposited and maintained.

Specifies rules governing the administration of interest earned on trust accounts.

At the time of the remittance of interest, requires the financial institution holding the trust money to provide a statement to the foundation and the commissioner of insurance showing certain information specified in the act.

Creates the foundation as a Colorado nonprofit corporation that is not subject to administrative direction by any department, commission, board, bureau, or agency of the state. Places governance of the foundation in a board of directors (board). Specifies requirements concerning the membership, appointment, and administration of the board. Requires any board member, employee, or other agent or adviser of the foundation who has a direct or indirect interest in any contract or transaction with the foundation to disclose this interest to the foundation, and prohibits any board member, employee, or other agent or adviser

having such interest from participating on behalf of the foundation in the authorization of any such contract or transaction. Specifies general powers of the foundation.

Requires all money remitted pursuant to the act to be distributed by the foundation on an annual basis, less any reserved amount approved by the board, as specified in the act. Specifies the permissible purposes and uses of money awarded from the fund.

Requires annual reporting by the foundation to the governor and the general assembly.

Makes conforming amendments. Makes legislative findings and declarations. Defines terms.

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

2 **SECTION 1.** 10-11-102 (3.7), Colorado Revised Statutes, is  
3 amended, and the said 10-11-102 is further amended BY THE  
4 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

5 **10-11-102. Definitions.** As used in this article, unless the context  
6 otherwise requires:

7 (2.7) "BENEFICIAL OWNER" MEANS A PERSON OTHER THAN THE  
8 BUYER IN A REAL ESTATE TRANSACTION FOR WHOSE BENEFIT A CLOSING  
9 AND SETTLEMENT SERVICES PROVIDER IS ENTRUSTED TO HOLD TRUST  
10 MONEY.

11 (3.6) "CLOSING AND SETTLEMENT SERVICES PROVIDER" MEANS  
12 ANY TITLE INSURANCE COMPANY, TITLE INSURANCE ENTITY OR ITS AGENT,  
13 ATTORNEY, ESCROW AGENT, CLOSING AGENT, OR ANY OTHER PERSON THAT  
14 HOLDS MONEY TO BE TRANSMITTED TO OR FROM THE SELLER, PURCHASER,  
15 OR A LENDER IN CONNECTION WITH CLOSING AND SETTLEMENT SERVICES.

16 (3.7) ~~"Gap coverage" means insuring, guaranteeing, or~~  
17 ~~indemnifying owners of real property, or others interested therein, against~~  
18 ~~loss or damage suffered by reason of matters appearing of record in the~~  
19 ~~office of the clerk and recorder subsequent to the date of issuance of a~~

1 ~~title insurance commitment and prior to the recording of closing~~  
2 ~~documents for the real property concerned.~~ "COMMISSIONER" MEANS THE  
3 COMMISSIONER OF INSURANCE.

4 (3.8) "FOUNDATION" MEANS THE FIDUCIARY EARNINGS FOR  
5 AFFORDABLE HOUSING FOUNDATION CREATED IN SECTION 24-69-104 (1),  
6 C.R.S.

7 (3.9) "GAP COVERAGE" MEANS INSURING, GUARANTEEING, OR  
8 INDEMNIFYING OWNERS OF REAL PROPERTY, OR OTHERS INTERESTED  
9 THEREIN, AGAINST LOSS OR DAMAGE SUFFERED BY REASON OF MATTERS  
10 APPEARING OF RECORD IN THE OFFICE OF THE CLERK AND RECORDER  
11 SUBSEQUENT TO THE DATE OF ISSUANCE OF A TITLE INSURANCE  
12 COMMITMENT AND PRIOR TO THE RECORDING OF CLOSING DOCUMENTS FOR  
13 THE REAL PROPERTY CONCERNED.

14 (11) "TRUST MONEY" MEANS A DEPOSIT, PAYMENT, OR OTHER  
15 MONEY THAT A PERSON ENTRUSTS TO A CLOSING AND SETTLEMENT  
16 SERVICES PROVIDER TO HOLD FOR THE BENEFIT OF A BUYER IN A REAL  
17 ESTATE TRANSACTION OR FOR A BENEFICIAL OWNER IN CONNECTION WITH  
18 AN ESCROW, SETTLEMENT, OR CLOSING.

19 **SECTION 2.** Article 11 of title 10, Colorado Revised Statutes, is  
20 amended BY THE ADDITION OF THE FOLLOWING NEW  
21 SECTIONS to read:

22 **10-11-127. Pooling and commingling of trust money in**  
23 **connection with closing and settlement services - exceptions -**  
24 **payment of interest earnings to fiduciary earnings for affordable**  
25 **housing foundation - rules.** (1) (a) EXCEPT AS OTHERWISE PROVIDED IN  
26 THIS SECTION, ON OR AFTER SEPTEMBER 1, 2008, ANY CLOSING AND  
27 SETTLEMENT SERVICES PROVIDER SHALL POOL AND COMMINGLE TRUST

1 MONEY RECEIVED FROM CLIENTS OR BENEFICIAL OWNERS IN CONNECTION  
2 WITH ESCROWS OR CLOSINGS.

3 (b) THE CLOSING AND SETTLEMENT SERVICES PROVIDER  
4 RESPONSIBLE FOR THE TRUST MONEY SHALL, AS EARLY IN THE  
5 TRANSACTION AS PRACTICABLE, GIVE NOTICE TO ALL PARTIES TO THE  
6 TRANSACTION THAT THE TRUST MONEY, ABSENT DIRECTION FROM THE  
7 PARTIES, WILL BE PLACED IN A FIDUCIARY ACCOUNT THAT MAY GENERATE  
8 INTEREST AND THAT SUCH INTEREST, IF ANY, WILL BE DONATED TO THE  
9 FOUNDATION.

10 (c) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,  
11 THE REQUIREMENTS OF PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL  
12 NOT APPLY TO ANY ESCROW, SETTLEMENT, OR CLOSING WHERE A CLIENT  
13 OR BENEFICIAL OWNER REQUESTS IN WRITING THAT ANY INTEREST EARNED  
14 ON TRUST MONEY BE RETURNED TO THE CLIENT OR BENEFICIAL OWNER.

15 (d) FOR PURPOSES OF THIS SECTION, INTEREST EARNED ON TRUST  
16 MONEY IS THE PROPERTY OF EITHER THE SELLER IN CONNECTION WITH THE  
17 SALE OF AN INTEREST IN REAL PROPERTY IN THE STATE OR A BORROWER IN  
18 CONNECTION WITH THE REFINANCING OF AN INTEREST IN REAL PROPERTY  
19 IN THE STATE.

20 (e) EXCEPT FOR TRUST MONEY THAT A CLOSING AND SETTLEMENT  
21 SERVICES PROVIDER PLACES IN A COMMINGLED ACCOUNT UNDER  
22 PARAGRAPH (a) OF THIS SUBSECTION (1), AND SUBJECT TO RULES ADOPTED  
23 BY THE COMMISSIONER PURSUANT TO SUBSECTION (4) OF THIS SECTION,  
24 TRUST MONEY IN THE POSSESSION OF A CLOSING AND SETTLEMENT  
25 SERVICES PROVIDER MAY BE DEPOSITED IN ANY OTHER DEPOSIT OR  
26 INVESTMENT VEHICLE:

27 (I) SPECIFIED BY THE CLIENT OR BENEFICIAL OWNER; OR

1           (II) AS AGREED UPON BY THE CLIENT OR THE BENEFICIAL OWNER  
2 AND THE CLOSING AND SETTLEMENT SERVICES PROVIDER.

3           (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,  
4 THERE SHALL BE NO REQUIREMENT TO POOL AND COMMINGLE INTEREST IN  
5 ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION  
6 THAT IS BEING COLLECTED FOR THE PURPOSE OF FUNDING EITHER THE  
7 COLORADO ASSOCIATION OF REALTORS HOUSING OPPORTUNITY  
8 FOUNDATION OR THE COLORADO LAWYER TRUST ACCOUNT FOUNDATION.

9           (3) AT LEAST ONCE EACH QUARTER, THE FINANCIAL INSTITUTION  
10 IN WHICH A COMMINGLED ACCOUNT IS MAINTAINED SHALL PAY THE  
11 INTEREST EARNED ON THE ACCOUNT, LESS ANY SERVICE CHARGES OF THE  
12 INSTITUTION, TO THE FOUNDATION TO ENHANCE THE AVAILABILITY OF  
13 AFFORDABLE HOUSING THROUGHOUT THE STATE IN ACCORDANCE WITH  
14 THE PROVISIONS OF ARTICLE 69 OF TITLE 24, C.R.S.

15           (4) THE COMMISSIONER SHALL ADOPT SUCH RULES, IN  
16 ACCORDANCE WITH ARTICLE 4 OF TITLE 24, C.R.S., AS ARE NECESSARY  
17 FOR THE EFFECTIVE ADMINISTRATION AND IMPLEMENTATION OF THIS  
18 SECTION AND SECTION 10-11-128. SUCH RULE-MAKING SHALL BE  
19 COMPLETED BY DECEMBER 31, 2008.

20           (5) ANY FINANCIAL INSTITUTION HOLDING TRUST MONEY SHALL  
21 BEGIN PAYING INTEREST PURSUANT TO THIS SECTION NOT LATER THAN  
22 NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. NO PERSON  
23 OR ENTITY SHALL BE REQUIRED TO REMIT INTEREST TO THE FOUNDATION  
24 UNTIL THE COMMISSION HAS COMPLETED THE RULE-MAKING REQUIRED BY  
25 SUBSECTION (4) OF THIS SECTION.

26           **10-11-128. Deposit, maintenance, and disbursement of money**  
27 **held in trust - transactions involving real property interests in the**

1 **state - remittance of interest to foundation.** (1) (a) TRUST MONEY  
2 REQUIRED TO BE POOLED AND COMMINGLED UNDER SECTION 10-11-127 (1)  
3 IN CONNECTION WITH A TRANSACTION INVOLVING REAL PROPERTY  
4 INTERESTS WITHIN THE STATE SHALL BE DEPOSITED AND MAINTAINED  
5 UNTIL DISBURSED IN ACCORDANCE WITH THE TRANSACTION:

6 (I) IN A FINANCIAL INSTITUTION LOCATED IN THE STATE; OR

7 (II) SUBJECT TO THE APPROVAL OF THE DIVISION OF BANKING  
8 CREATED IN SECTION 11-102-101 (1), C.R.S., IN A FINANCIAL INSTITUTION  
9 LOCATED OUTSIDE THE STATE THAT SATISFIES THE REQUIREMENTS OF THIS  
10 SECTION.

11 (b) NOTWITHSTANDING ANY INSTRUCTIONS FROM THE PARTIES TO  
12 A CLOSING AND SETTLEMENT SERVICES PROVIDER, NO TRUST MONEY  
13 SHALL BE DEPOSITED IN A FINANCIAL INSTITUTION THAT IS LOCATED  
14 OUTSIDE THE UNITED STATES.

15 (2) INTEREST EARNED FROM TRUST ACCOUNTS SHALL BE  
16 ADMINISTERED AS FOLLOWS:

17 (a) THE RATE OF INTEREST ON THE TRUST ACCOUNT SHALL BE  
18 COMPARABLE TO THE REGULAR RATE OF INTEREST PAID ON OTHER  
19 ACCOUNTS WITH THE FINANCIAL INSTITUTION IN WHICH THE TRUST  
20 ACCOUNT IS HELD.

21 (b) THE INTEREST EARNED, LESS ANY REGULAR REASONABLE  
22 SERVICE CHARGE OF THE FINANCIAL INSTITUTION FOR ACCOUNTING, DATA  
23 PROCESSING, OR OTHER SERVICES DIRECTLY RELATED TO THE  
24 ADMINISTRATION OF TRUST ACCOUNTS, SHALL BE REMITTED AT LEAST  
25 QUARTERLY TO THE FOUNDATION IN THE SAME OR COMPARABLE MANNER  
26 AS THAT REQUIRED FOR INTEREST ON TRUST ACCOUNTS ESTABLISHED FOR  
27 THE BENEFIT OF THE COLORADO LAWYERS TRUST ACCOUNT FOUNDATION.

1 ANY SUCH CHARGES SHALL NOT EXCEED FIVE PERCENT OF THE VALUE OF  
2 THE AMOUNT REMITTED ON AN ANNUAL BASIS. THE COSTS OF  
3 ADMINISTRATION FOR WHICH THE FINANCIAL INSTITUTION OR CLOSING  
4 AND SETTLEMENT SERVICES PROVIDER RECEIVES REIMBURSEMENT MAY  
5 NOT BE DEDUCTIBLE FROM THE AMOUNT TO BE REMITTED PURSUANT TO  
6 THIS PARAGRAPH (b). INTEREST REMITTED SHALL NOT BE LESS THAN A  
7 RATE OF ONE PERCENT PER ANNUAL PERCENTAGE YIELD UNLESS THE RATE  
8 OF OTHER SIMILAR TYPES OF ACCOUNTS WITH COMPARABLE DEPOSITS IS  
9 LESS THAN ONE PERCENT.

10 (3) AT THE TIME OF THE REMITTANCE, THE FINANCIAL INSTITUTION  
11 HOLDING THE TRUST MONEY SHALL PROVIDE A STATEMENT TO THE  
12 FOUNDATION AND THE COMMISSIONER SHOWING EACH OF THE FOLLOWING  
13 ITEMS:

14 (a) THE NAME OF THE CLOSING AND SETTLEMENT SERVICES  
15 PROVIDER FOR WHOM THE REMITTANCE IS BEING SENT;

16 (b) THE ACCOUNT NUMBER;

17 (c) THE RATE OF INTEREST APPLIED AND AN AFFIDAVIT STATING  
18 THAT THE RATE OF INTEREST IS THE SAME AS THE RATE PAID ON  
19 COMPARABLE ACCOUNTS;

20 (d) THE SERVICE CHARGES;

21 (e) THE PROCESSING CHARGES TO THE CLOSING AND SETTLEMENT  
22 SERVICES PROVIDER;

23 (f) THE NET AMOUNT REMITTED FOR EACH ACCOUNT;

24 (g) THE REPORTING PERIOD;

25 (h) THE TOTAL AMOUNT REMITTED FOR EACH ACCOUNT;

26 (i) THE TOTAL NUMBER OF ACCOUNTS;

27 (j) THE AVERAGE ACCOUNT BALANCE FOR EACH MONTH OF THE

1 PERIOD FOR WHICH THE REPORT IS MADE; AND

2 (k) THE NAME OF THE FINANCIAL INSTITUTION AND CONTACT  
3 INFORMATION RELATING TO THE TRUST ACCOUNT.

4 (4) ALL MONEY REMITTED PURSUANT TO THIS SECTION SHALL BE  
5 DISTRIBUTED BY THE FOUNDATION ON AN ANNUAL BASIS IN ACCORDANCE  
6 WITH THE REQUIREMENTS OF SECTION 24-69-107, C.R.S., LESS ANY  
7 RESERVED AMOUNT APPROVED BY THE BOARD OF DIRECTORS OF THE  
8 FOUNDATION.

9 **SECTION 3.** Title 24, Colorado Revised Statutes, is amended BY  
10 THE ADDITION OF A NEW ARTICLE to read:

11 **ARTICLE 69**

12 **Fiduciary Earnings for Affordable**

13 **Housing Foundation**

14 **24-69-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY  
15 BE CITED AS THE "FIDUCIARY EARNINGS FOR AFFORDABLE HOUSING  
16 FOUNDATION ACT".

17 **24-69-102. Legislative declaration.** (1) THE GENERAL  
18 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

19 (a) COLORADO FACES A SEVERE SHORTAGE OF SAFE AND DECENT  
20 HOUSING AFFORDABLE TO CHILDCARE PROVIDERS, RECEPTIONISTS,  
21 GROCERY CLERKS, TEACHERS, AND OTHER LOW- AND MODERATE-INCOME  
22 WORKERS, AS WELL AS THE STATE'S MOST VULNERABLE RESIDENTS, THE  
23 HOMELESS, DISABLED, OR ELDERLY RESIDENTS, AND CHILDREN LIVING IN  
24 POVERTY.

25 (b) THIS LACK OF AFFORDABLE HOUSING AFFECTS THE ABILITIES OF  
26 COMMUNITIES TO MAINTAIN STABLE ECONOMIES AND MEET THEIR  
27 TRANSPORTATION NEEDS AND ALSO AFFECTS THE CAPACITY OF WORKING

1 FAMILIES TO ACHIEVE A QUALITY OF LIFE THAT ALLOWS THEM ACCESS TO  
2 GREATER ECONOMIC, EDUCATIONAL, AND SOCIAL OPPORTUNITIES.

3 (c) IN ADDITION TO THE DIRECT SOCIAL AND ECONOMIC BENEFITS  
4 IT PROVIDES TO CHILDREN AND FAMILIES, THE PRODUCTION OF  
5 AFFORDABLE HOUSING CREATES POSITIVE ECONOMIC BENEFITS SUCH AS  
6 THE CREATION OF JOBS, THE ATTRACTION OF NEW BUSINESSES, AND THE  
7 GENERATION OF TAX REVENUES.

8 (d) IT IS IN THE STATE'S INTEREST TO ASSIST IN PROVIDING THE  
9 KIND OF SAFE, DECENT, AND AFFORDABLE HOUSING THAT IS  
10 FUNDAMENTAL TO THE HEALTH AND WELL-BEING OF INDIVIDUALS,  
11 FAMILIES, AND COMMUNITIES.

12 (e) AS OF 2008, THIRTY-EIGHT OTHER STATES HAVE INVESTED IN  
13 HOUSING FUNDS TO ACCOMPLISH THE PURPOSES SPECIFIED IN THIS  
14 ARTICLE, AND THE FUNDS ESTABLISHED IN THOSE STATES HAVE PROVEN TO  
15 BE AN EFFICIENT, FLEXIBLE, AND USER-FRIENDLY MEANS OF MITIGATING  
16 THE SOCIAL AND ECONOMIC IMPACTS OF A LACK OF AFFORDABLE HOUSING.

17 (2) NOW, THEREFORE, BY ENACTING THIS ARTICLE, THE GENERAL  
18 ASSEMBLY INTENDS TO CREATE A FIDUCIARY EARNINGS FOR AFFORDABLE  
19 HOUSING FOUNDATION FOR THE PURPOSE OF CREATING A STATEWIDE  
20 SOURCE OF REVENUE TO SUPPORT THE CREATION AND MAINTENANCE OF  
21 SAFE AND AFFORDABLE HOUSING ALTERNATIVES FOR LOW- AND  
22 MODERATE-INCOME RESIDENTS OF THE STATE.

23 **24-69-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE  
24 CONTEXT OTHERWISE REQUIRES:

25 (1) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE  
26 FOUNDATION.

27 (2) "FOUNDATION" MEANS THE FIDUCIARY EARNINGS FOR

1 AFFORDABLE HOUSING FOUNDATION CREATED IN SECTION 24-69-104 (1).

2 (3) "FUND" MEANS THE FIDUCIARY EARNINGS FOR AFFORDABLE  
3 HOUSING FUND CREATED IN SECTION 24-69-108 (1).

4 **24-69-104. Fiduciary earnings for affordable housing**  
5 **foundation - creation - board of directors.** (1) THERE IS HEREBY  
6 CREATED THE FIDUCIARY EARNINGS FOR AFFORDABLE HOUSING  
7 FOUNDATION, WHICH SHALL BE A COLORADO NONPROFIT CORPORATION  
8 AND SHALL NOT BE SUBJECT TO ADMINISTRATIVE DIRECTION BY ANY  
9 DEPARTMENT, COMMISSION, BOARD, BUREAU, OR AGENCY OF THE STATE.

10 (2) THE POWERS OF THE FOUNDATION SHALL BE VESTED IN THE  
11 GOVERNING BODY OF THE FOUNDATION, WHICH SHALL BE A BOARD OF  
12 DIRECTORS CONSISTING OF FIFTEEN MEMBERS WHO SHALL BE APPOINTED  
13 BY THE GOVERNOR FOR TERMS OF FOUR YEARS EACH; EXCEPT THAT, IN THE  
14 DISCRETION OF THE GOVERNOR, SIX OF THE ORIGINAL MEMBERS SHALL BE  
15 INITIALLY APPOINTED FOR A TERM OF FOUR YEARS EACH, AND THE  
16 REMAINING SEVEN ORIGINAL MEMBERS SHALL BE INITIALLY APPOINTED  
17 FOR A TERM OF TWO YEARS EACH. THEREAFTER, MEMBERS SHALL BE  
18 APPOINTED FOR TERMS OF FOUR YEARS EACH.

19 (3) THE FIFTEEN MEMBERS OF THE BOARD SHALL BE APPOINTED AS  
20 FOLLOWS:

21 (a) ONE MEMBER SHALL BE A REPRESENTATIVE OF THE DIVISION OF  
22 HOUSING WITHIN THE DEPARTMENT OF LOCAL AFFAIRS;

23 (b) ONE MEMBER SHALL BE A REPRESENTATIVE OF THE COLORADO  
24 HOUSING AND FINANCE AUTHORITY;

25 (c) ONE MEMBER SHALL REPRESENT THE BANKING OR FINANCIAL  
26 SERVICES INDUSTRY;

27 (d) THREE MEMBERS SHALL REPRESENT LOCAL GOVERNMENTS

1        WITHIN THE STATE. OF SUCH MEMBERS, ONE SHALL REPRESENT A LOCAL  
2        GOVERNMENT WITH A STRONG PRESENCE OF RESORT FACILITIES WITHIN  
3        THE TERRITORIAL BOUNDARIES OF THE LOCAL GOVERNMENT; ONE SHALL  
4        REPRESENT A LOCAL GOVERNMENT THAT IS PREDOMINATELY URBAN IN  
5        CHARACTER; AND THE FINAL MEMBER SHALL REPRESENT A LOCAL  
6        GOVERNMENT THAT IS PREDOMINANTLY RURAL IN CHARACTER WITHOUT  
7        A STRONG RESORT PRESENCE. OF THESE THREE MEMBERS, AT LEAST ONE  
8        SHALL REPRESENT A MUNICIPALITY AND AT LEAST ONE SHALL REPRESENT  
9        A COUNTY.

10            (e) ONE MEMBER SHALL BE A REPRESENTATIVE OF THE TITLE  
11        INSURANCE INDUSTRY;

12            (f) ONE MEMBER SHALL BE A LICENSED REAL ESTATE BROKER OR  
13        OTHERWISE REPRESENT THE REAL ESTATE INDUSTRY;

14            (g) ONE MEMBER SHALL BE A CURRENT OR FORMER USER OF A  
15        SUPPORTED HOUSING PROGRAM;

16            (h) ONE MEMBER SHALL BE A PERSON EXPERIENCED IN  
17        FORECLOSURE PREVENTION;

18            (i) ONE MEMBER SHALL BE A PERSON EXPERIENCED IN REAL  
19        ESTATE DEVELOPMENT WITH AN EMPHASIS IN AFFORDABLE HOUSING;

20            (j) ONE MEMBER SHALL REPRESENT THE MORTGAGE LENDING  
21        INDUSTRY;

22            (k) ONE MEMBER SHALL REPRESENT THE HOMEBUILDING  
23        INDUSTRY;

24            (l) ONE MEMBER SHALL BE A MEMBER OF THE SECTION COUNCIL OF  
25        THE REAL ESTATE SECTION OF THE COLORADO BAR ASSOCIATION OR ANY  
26        SUCCESSOR ENTITY;

27            (m) ONE MEMBER SHALL BE A RESIDENT OF THE STATE WHO DOES

1 NOT OTHERWISE SATISFY THE REQUIREMENTS SPECIFIED IN PARAGRAPHS  
2 (a) TO (1) OF THIS SUBSECTION (3).

3 (4) IN THE CASE OF A VACANCY ON THE BOARD CAUSED BY DEATH  
4 OR RESIGNATION OR BECAUSE A MEMBER NO LONGER SATISFIES THE  
5 REQUIREMENTS FOR MEMBERSHIP ON THE BOARD AS SPECIFIED IN  
6 SUBSECTION (3) OF THIS SECTION, THE GOVERNOR SHALL FILL THE  
7 VACANCY FOR THE UNEXPIRED TERM.

8 (5) NOT MORE THAN EIGHT OF THE MEMBERS OF THE BOARD SHALL  
9 BE MEMBERS OF THE SAME POLITICAL PARTY.

10 (6) MEMBERS OF THE BOARD SHALL SERVE WITHOUT  
11 COMPENSATION BUT MAY BE REIMBURSED FOR NECESSARY EXPENSES  
12 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

13 (7) THE BOARD SHALL INITIALLY MEET UPON CALL OF THE  
14 GOVERNOR. AT ITS FIRST MEETING, THE BOARD SHALL ELECT A  
15 CHAIRPERSON FROM AMONG ITS MEMBERSHIP. THE BOARD SHALL FIX THE  
16 TIME AND PLACE AT WHICH ITS REGULAR AND SPECIAL MEETINGS ARE TO  
17 BE HELD. THE BOARD SHALL MEET NOT LESS THAN ONCE PER CALENDAR  
18 QUARTER.

19 (8) THE GOVERNOR MAY REMOVE ANY APPOINTED MEMBER OF THE  
20 BOARD FOR MALFEASANCE IN OFFICE, FOR FAILURE TO REGULARLY  
21 ATTEND MEETINGS, OR FOR ANY CAUSE THAT RENDERS THE MEMBER  
22 INCAPABLE OR UNFIT TO DISCHARGE THE DUTIES OF HIS OR HER OFFICE.  
23 ANY SUCH REMOVAL, WHEN MADE, SHALL NOT BE SUBJECT TO REVIEW.

24 (9) NO PART OF THE REVENUES OR ASSETS OF THE FOUNDATION  
25 SHALL INURE TO THE BENEFIT OF, OR BE DISTRIBUTED TO, ITS MEMBERS OR  
26 OFFICERS.

27 **24-69-105. Disclosure of interests required.** ANY BOARD

1 MEMBER, EMPLOYEE, OR OTHER AGENT OR ADVISER OF THE FOUNDATION  
2 WHO HAS A DIRECT OR INDIRECT INTEREST IN ANY CONTRACT OR  
3 TRANSACTION WITH THE FOUNDATION SHALL DISCLOSE THIS INTEREST TO  
4 THE FOUNDATION. THIS INTEREST SHALL BE SET FORTH IN THE MINUTES  
5 OF THE FOUNDATION, AND NO BOARD MEMBER, EMPLOYEE, OR OTHER  
6 AGENT OR ADVISER HAVING SUCH INTEREST SHALL PARTICIPATE ON  
7 BEHALF OF THE FOUNDATION IN THE AUTHORIZATION OF ANY SUCH  
8 CONTRACT OR TRANSACTION.

9 **24-69-106. General powers of the foundation.** (1) IN ADDITION  
10 TO ANY OTHER POWERS GRANTED TO THE FOUNDATION IN THIS ARTICLE,  
11 THE FOUNDATION SHALL HAVE THE FOLLOWING POWERS:

12 (a) TO HOLD AND ADMINISTER ALL MONEY COLLECTED FOR,  
13 DELIVERED TO, AND DEPOSITED INTO THE FUND IN ACCORDANCE WITH THE  
14 PROVISIONS OF SECTION 10-11-127, C.R.S., FOR THE PURPOSES SPECIFIED  
15 IN THIS ARTICLE. THE FOUNDATION SHALL MAINTAIN ITS BOOKS AND  
16 RECORDS PERTAINING TO THE MONEY REMITTED TO THE FUND PURSUANT  
17 TO SECTION 10-11-128 (2) (b), C.R.S., IN ACCORDANCE WITH GENERALLY  
18 ACCEPTED ACCOUNTING PRINCIPLES AND, IN ADDITION, SHALL MAINTAIN  
19 RECORDS ADEQUATE TO IDENTIFY THE MONEY COLLECTED AND REMITTED  
20 TO THE FUND BY EACH PERSON.

21 (b) TO PURCHASE, LEASE, TRADE, EXCHANGE, OR OTHERWISE  
22 ACQUIRE, MAINTAIN, HOLD, IMPROVE, MORTGAGE, LEASE, AND DISPOSE OF  
23 REAL PROPERTY AND PERSONAL PROPERTY, WHETHER TANGIBLE OR  
24 INTANGIBLE, AND ANY INTEREST THEREIN;

25 (c) TO ACQUIRE OFFICE SPACE, EQUIPMENT, SERVICES, SUPPLIES,  
26 AND INSURANCE NECESSARY TO CARRY OUT THE PURPOSES OF THIS  
27 ARTICLE;

1 (d) TO DISBURSE ANY MONEY IN THE FUND IN ACCORDANCE WITH  
2 THE REQUIREMENTS OF THIS ARTICLE;

3 (e) TO CONTRACT FOR AND ACCEPT ANY GIFTS, GRANTS, LOANS OF  
4 FUNDS, PROPERTY, OR ANY OTHER AID IN ANY FORM FROM THE FEDERAL  
5 GOVERNMENT, THE STATE, ANY STATE AGENCY, ANY OTHER SOURCE, OR  
6 ANY COMBINATION THEREOF, AND TO COMPLY, SUBJECT TO THE  
7 PROVISIONS OF THIS ARTICLE, WITH THE TERMS AND CONDITIONS THEREOF;

8 (f) TO ACT AS AGENT FOR THE FEDERAL, STATE, OR A LOCAL  
9 GOVERNMENT OR FOR CORPORATIONS IN CONNECTION WITH THE  
10 ACQUISITION, CONSTRUCTION, RECONSTRUCTION, REHABILITATION,  
11 LEASING, OPERATION, OR MANAGEMENT OF A HOUSING FACILITY OR  
12 PROJECT, OR ANY PART THEREOF, OR THE FURNISHING OF CAPITAL TO  
13 BUSINESS ENTERPRISES;

14 (g) TO APPOINT AN EXECUTIVE DIRECTOR OF THE FOUNDATION AND  
15 SUCH OTHER AGENTS, EMPLOYEES, AND PROFESSIONAL AND BUSINESS  
16 ADVISERS AS MAY FROM TIME TO TIME BE NECESSARY IN ITS JUDGMENT TO  
17 ACCOMPLISH THE PURPOSES OF THIS ARTICLE; TO FIX THE COMPENSATION  
18 OF SUCH EMPLOYEES, AGENTS, AND ADVISERS; AND TO ESTABLISH THE  
19 POWERS AND DUTIES OF ALL OFFICERS, AGENTS, EMPLOYEES, AND OTHER  
20 PERSONS CONTRACTING WITH THE FOUNDATION; EXCEPT THAT, ANY SUCH  
21 AGENTS, EMPLOYEES, AND ADVISERS SHALL NOT BE EMPLOYED BY OR  
22 HAVE A PERSONAL FINANCIAL INTEREST IN ANY PRIVATE ENTITY THAT  
23 EMPLOYS A MEMBER OF THE BOARD OR IN WHICH A MEMBER OF THE BOARD  
24 HOLDS A PERSONAL FINANCIAL INTEREST;

25 (h) TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE FOUNDATION  
26 TO ENTER INTO CONTRACTS, EXECUTE ALL INSTRUMENTS, AND DO ALL  
27 THINGS NECESSARY OR CONVENIENT IN THE EXERCISE OF THE POWERS

1 GRANTED IN THIS ARTICLE;

2 (i) TO HAVE AND EXERCISE ALL RIGHTS AND POWERS NECESSARY  
3 OR INCIDENTAL TO OR IMPLIED FROM THE SPECIFIC POWERS GRANTED IN  
4 THIS ARTICLE, WHICH SPECIFIC POWERS SHALL NOT BE CONSIDERED AS A  
5 LIMITATION UPON ANY POWER NECESSARY OR APPROPRIATE TO CARRY OUT  
6 THE PURPOSES AND INTENT OF THIS ARTICLE; AND

7 (j) TO MAKE AND EXECUTE AGREEMENTS, CONTRACTS, AND OTHER  
8 INSTRUMENTS NECESSARY OR CONVENIENT IN THE EXERCISE OF THE  
9 POWERS AND FUNCTIONS OF THE FOUNDATION UNDER THIS ARTICLE,  
10 INCLUDING BUT NOT LIMITED TO CONTRACTS WITH ANY PERSON, FIRM,  
11 CORPORATION, MUNICIPALITY, STATE AGENCY, COUNTY, OR OTHER  
12 ENTITY. ALL MUNICIPALITIES, COUNTIES, AND STATE AGENCIES ARE  
13 HEREBY AUTHORIZED TO ENTER INTO AND DO ALL THINGS NECESSARY TO  
14 PERFORM ANY SUCH ARRANGEMENT OR CONTRACT WITH THE  
15 FOUNDATION.

16 **24-69-107. Fund - creation - distribution of money - purpose**  
17 **of funding - uses or purposes of financial assistance from fund.**

18 (1) SUBJECT TO THE PROVISIONS OF SECTION 24-69-106 (1) (a), ALL  
19 MONEY REMITTED TO THE FOUNDATION PURSUANT TO SECTION 10-11-128

20 (2) (b), C.R.S., SHALL BE DEPOSITED INTO THE FIDUCIARY EARNINGS FOR  
21 AFFORDABLE HOUSING FUND, WHICH IS HEREBY CREATED. THE  
22 FOUNDATION SHALL DISTRIBUTE MONEY FROM THE FUND ON AN ANNUAL  
23 BASIS, LESS ANY RESERVED AMOUNT APPROVED BY THE BOARD, AS  
24 FOLLOWS:

25 (a) AT SUCH TIME AS THE AMOUNT OF MONEY IN THE FUND  
26 CONSTITUTES AT LEAST TWENTY MILLION DOLLARS:

27 (I) FIFTY PERCENT OF SUCH MONEY SHALL BE DISTRIBUTED TO

1 LOCAL GOVERNMENTS THROUGH A FORMULA TO BE RECOMMENDED BY  
2 THE STATE HOUSING BOARD WITHIN THE DIVISION OF HOUSING CREATED  
3 IN SECTION 24-32-706 (1), TAKING INTO ACCOUNT THE POPULATION OF  
4 LOCAL COMMUNITIES. SUCH MONEY SHALL BE DISTRIBUTED BASED UPON  
5 A COMMUNITY NEEDS ASSESSMENT AND A HOUSING PLAN PREPARED BY  
6 THE LOCAL GOVERNMENT.

7 (II) FIFTY PERCENT OF SUCH MONEY SHALL BE DISTRIBUTED BY  
8 THE FOUNDATION AS GRANTS BASED UPON A GRANTS APPLICATION  
9 PROCESS ESTABLISHED BY THE FOUNDATION. UP TO TEN PERCENT OF SUCH  
10 MONEY MAY BE USED BY THE STAFF OF THE FOUNDATION TO ASSIST LOCAL  
11 GOVERNMENTS WITH SMALL NUMBERS OF RESIDENTS IN PREPARING GRANT  
12 APPLICATIONS AND IN PROVIDING TECHNICAL ASSISTANCE TO LOCAL  
13 GOVERNMENTS.

14 (b) UNTIL SUCH TIME AS THE AMOUNT OF MONEY IN THE FUND  
15 CONSTITUTES AT LEAST TWENTY MILLION DOLLARS, ALL MONEY SHALL BE  
16 DISTRIBUTED BY THE FOUNDATION AS GRANTS IN ACCORDANCE WITH THE  
17 REQUIREMENTS OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS  
18 SUBSECTION (1).

19 (c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT NOT LESS  
20 THAN FIFTY PERCENT OF THE MONEY DISTRIBUTED FROM THE FUND ON AN  
21 ANNUAL BASIS BENEFIT HOUSEHOLDS EARNING FIFTY PERCENT OR LESS OF  
22 THE AREA MEDIAN INCOME. FOR PURPOSES OF THIS SECTION, "AREA  
23 MEDIAN INCOME" MEANS THE FEDERAL STANDARD PUBLISHED BY THE  
24 UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
25 AND ADJUSTED FOR GEOGRAPHIC REGION AND FAMILY SIZE.

26 (2) MONEY EITHER AWARDED FROM THE FUND BY MEANS OF  
27 GRANTS OR DISTRIBUTED BY LOCAL GOVERNMENTS ON A PER POPULATION

1 BASIS PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE USED TO  
2 SUPPORT THE CREATION AND MAINTENANCE OF AFFORDABLE HOUSING  
3 STATEWIDE BY MEANS OF, OR FOR, THE FOLLOWING USES OR PURPOSES,  
4 WITHOUT LIMITATION:

5 (a) FORECLOSURE PREVENTION AND MITIGATION;

6 (b) NEW CONSTRUCTION AND THE RELATED INFRASTRUCTURE  
7 COSTS OF SHELTER, TRANSITIONAL HOUSING, AFFORDABLE RENTAL, AND  
8 AFFORDABLE OWNERSHIP HOUSING STOCK;

9 (c) THE ACQUISITION OF EXISTING REAL ESTATE FOR INTENDED  
10 CONVERSION TO SHELTER, TRANSITIONAL HOUSING, AFFORDABLE RENTAL,  
11 OR AFFORDABLE OWNERSHIP HOUSING STOCK;

12 (d) THE ACQUISITION OF REAL PROPERTY OR THE BANKING OF THE  
13 PROPERTY IN ANTICIPATION OF NEW CONSTRUCTION AND  
14 PREDEVELOPMENT COSTS;

15 (e) DEFRAYING THE COST OF AFFORDABLE HOUSING IN  
16 CONFORMITY WITH LOCAL INCLUSIONARY ZONING OR INCLUSIONARY  
17 HOUSING ORDINANCES;

18 (f) THE REHABILITATION OF A SUBSTANDARD SHELTER,  
19 TRANSITIONAL HOUSING, OR AN AFFORDABLE RENTAL AND OWNERSHIP  
20 UNIT;

21 (g) ASSISTANCE WITH DOWN PAYMENT OR CLOSING COSTS; OR

22 (h) THE DEVELOPMENT OF SPECIAL NEEDS HOUSING THAT  
23 CONFORMS TO ANY OF THE PURPOSES OR USES SPECIFIED IN PARAGRAPHS  
24 (a) TO (g) OF THIS SUBSECTION (2).

25 **24-69-108. Reporting.** NOT LATER THAN FEBRUARY 15 OF EACH  
26 CALENDAR YEAR, THE EXECUTIVE DIRECTOR OF THE FOUNDATION SHALL  
27 REPORT TO THE GOVERNOR AND THE STANDING COMMITTEE OF EACH

1 CHAMBER OF THE GENERAL ASSEMBLY WITH JURISDICTION OVER LOCAL  
2 GOVERNMENT MATTERS. THE REPORT SHALL CONTAIN, WITHOUT  
3 LIMITATION, A SUMMARY OF THE AMOUNT OF MONEY REMITTED TO THE  
4 FUND OVER THE PAST YEAR, MONEY DISTRIBUTED BY THE FOUNDATION  
5 FROM THE FUND DURING THE PAST YEAR, AND A DESCRIPTION OF THE TYPE  
6 AND NATURE OF THE ACTIVITIES FUNDED.

7 **SECTION 4.** 24-32-707 (1), Colorado Revised Statutes, is  
8 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

9 **24-32-707. Powers of board.** (1) The board shall have the  
10 following powers:

11 (j) TO MAKE A RECOMMENDATION TO THE FIDUCIARY EARNINGS  
12 FOR AFFORDABLE HOUSING FOUNDATION CREATED IN SECTION 24-69-104  
13 (1) CONCERNING A FORMULA BY WHICH MONEY IN THE FIDUCIARY  
14 EARNINGS FOR AFFORDABLE HOUSING FUND MAY BE DISTRIBUTED TO  
15 LOCAL GOVERNMENTS TAKING INTO ACCOUNT THE POPULATION OF LOCAL  
16 COMMUNITIES PURSUANT TO SECTION 24-69-107 (1) (a) (I).

17 **SECTION 5.** 38-35-125, Colorado Revised Statutes, is amended  
18 BY THE ADDITION OF A NEW SUBSECTION to read:

19 **38-35-125. Closing and settlement services - disbursement of**  
20 **funds.** (4.5) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ON OR  
21 AFTER SEPTEMBER 1, 2008, ANY CLOSING AND SETTLEMENT SERVICES  
22 PROVIDER THAT HOLDS MONEY TO BE TRANSMITTED TO OR FROM THE  
23 SELLER, PURCHASER, OR A LENDER IN CONNECTION WITH CLOSING AND  
24 SETTLEMENT SERVICES IS SUBJECT TO, AND SHALL COMPLY WITH, THE  
25 REQUIREMENTS OF SECTIONS 10-11-127 AND 10-11-128, C.R.S. FOR  
26 PURPOSES OF THIS SECTION, "CLOSING AND SETTLEMENT SERVICES  
27 PROVIDER" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION

1 10-11-102 (3.6), C.R.S.

2 **SECTION 6. Effective date.** (1) This act shall take effect  
3 September 1, 2008.

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