

<p>Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to § 1-40-107(2), C.R.S. (2012) Appeal from the Ballot Title Board</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013- 2014 #45</p> <p><b>Petitioners:</b> Robert Bows and Jason Bosch; v.</p> <p><b>Respondents:</b> Barbara M. A. Walker and Don Childears;</p> <p><b>and</b></p> <p><b>Title Board:</b> Suzanne Staiert, Dan Domenico, and Jason Gelender.</p>	<p>Supreme Court Case No.: 2013SA231</p>
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<p><b>OPENING BRIEF OF RESPONDENT BARBARA M. A. WALKER</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

- It contains \_\_\_\_\_ words.  
 It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record, not to an entire document, where the issue was raised and ruled on.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

*s/ Thomas M. Rogers* \_\_\_\_\_

Thomas M. Rogers III

*Attorney for Respondent Barbara M. A. Walker*

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

A proposed initiative which seeks to establish a state-owned bank, but also permits the state bank to issue bonds without voter approval, and permits the unlimited transfer of funds, including borrowed funds, to the state's general fund, at the same time exempting those funds from the revenue and spending caps of Art. X, § 20 of the Colorado Constitution, violates the single subject requirement set forth in Art. V, § 1(5.5) of the Colorado Constitution because it contains multiple purposes not interrelated with and unnecessary to the implementation of the initiative's central purpose of establishing a state-owned bank.

## **STATEMENT OF THE CASE**

Proposed Ballot Initiative 45 (the "Initiative") is one of several attempts to date by Petitioner Bows to propose an amendment to the Colorado Constitution to establish a state-owned bank to be capitalized by all of the tax and other revenues of the State of Colorado, and to be governed by an elected board of directors. However, the Initiative goes far beyond the establishment of a bank and providing it with necessary and proper powers to operate. The Initiative gives the bank broad powers which are otherwise restricted under the Colorado Constitution, in contravention of at least two separate provisions of Art. X, § 20 ("TABOR"), as well as the balanced budget requirement of Art. X, § 16, and the prohibition

against multi-year public debt, Art. XI, § 3 of the Colorado Constitution. In addition to the establishment of a state-owned bank which would hold the State's deposits currently held in other banks and providing procedures for electing a Board of Directors and an Advisory Board for the governance of the Bank, the Initiative would permit the bank to issue bonds backed by the full faith and credit of the State without voter approval, and permits unlimited transfers of funds from the bank to the State's general fund, at the same time exempting those funds from TABOR's revenue and spending caps. Such reallocation of governmental power is unrelated and unnecessary to the establishment of a state-owned bank. Encompassing these multiple incongruous subjects within the Initiative violates the single subject requirement of the Colorado Constitution.

### **STATEMENT OF FACTS**

Petitioners Robert Bows and Jason Bosch (collectively, "Petitioners") submitted the Initiative to Colorado Legislative Council for statutorily mandated review on July 7, 2013. On July 23, 2013, Legislative Council and the Office of Legislative Legal Services held a review and comment hearing at which Petitioners addressed technical and substantive questions and comments. Later that same day, Petitioners submitted the Initiative to the Secretary of State for title setting. *See* 2013-2014 #45 – the original final typewritten draft (attached as Exhibit A).

At its August 21, 2013 hearing, the Ballot Title Board (the “Title Board”) denied title for the Initiative finding that it did not have jurisdiction, as the Initiative violated the single subject requirement of the Colorado Constitution. The Petitioners filed a Motion for Rehearing requesting reconsideration of the Title Board’s finding. At the rehearing held on September 4, 2013, Ms. Walker, a registered Colorado elector, objected to setting title for the Initiative on the basis that the Initiative violated the single subject requirement. After the rehearing, the Board again declined to set a title for Initiative 45, finding, by a vote of two to one, that the proposed language of the Initiative violated the single subject rule. Petitioners have applied to this Court for review of the Board’s decision contending that the Board erred in its finding that the Initiative violated the single subject requirement set forth in Art. V, § 1(5.5) of the Colorado Constitution.

### **SUMMARY OF THE ARGUMENT**

The proposed language of the Initiative contains multiple and distinct subjects, in violation of the single subject rule. Colo. Const. art. V, § 1(5.5). The stated purpose of the Initiative is to establish a state-owned bank “to strengthen its economy and protect it from the cyclical ups and downs caused by the private banks and financiers who control money creation and credit regulation processes in

the United States.”<sup>1</sup> In addition to that objective, however, the Initiative contains several distinct subjects which have no necessary or proper connection to its main purpose—the Initiative grants the bank powers to issue bonds backed by the full faith and credit of the State without voter approval; exempts the bank’s revenue and spending from the requirements of TABOR; allows unlimited transfers of funds, including borrowed funds, to the State’s general fund, and exempts those funds from the revenue and spending limitations of TABOR, as well as from the balanced budget provisions of Art. X, § 16 of the Colorado Constitution.

The single subject requirement is intended to prevent the voters from being confused or misled and to ensure that each proposal for change is considered on its own merits. Accordingly, the Title Board correctly found that it lacked jurisdiction to set the title for the Initiative as it contains multiple incongruous subjects, unnecessary and unrelated to its central purpose of establishing a state-owned bank.

### **STANDARD OF REVIEW**

Whether the Title Board has jurisdiction to set an initiative’s title is a question of law that this Court reviews *de novo*. See, e.g., *In re Title, Ballot Title & Submission Clause, & Summary for 1999-2000 #219*, 999 P.2d 819, 820-22

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<sup>1</sup> Ex. A, at Section (1)(a).

(Colo. 2000) (implicitly construing *de novo* C.R.S. § 1-40-107(1), which grants the Title Board jurisdiction over motions for rehearing). While the Court does not determine the “efficacy, construction, or future application” of the proposed initiative, it “will characterize the proposal sufficiently to enable review of the Title Board’s action” to determine if it complies with the single subject requirement. *In re Proposed Initiative for 1999-2000 #258(A)*, 4 P.3d 1094, 1098 (Colo. 2000).

### **ARGUMENT**

**The Board properly declined to set the title for Initiative 45 because the proposed measure violates the single subject requirement of Art. V, § 1(5.5) of the Colorado Constitution.**

The Title Board does not have authority to set the title for any initiative where the proposed “measure contains more than one subject, such that a ballot title cannot be fixed that clearly expresses a single subject . . . .” *See* Colo. Const. art. V, § 1(5.5); C.R.S. § 1-40-106.5(1). It is axiomatic that “in order to pass constitutional muster, a proposed initiative must concern only one subject—that is to say it must effect or carry out only one general object or purpose.” *In re Title, Ballot Title and Submission Clause for 2005-2006 #74*, 136 P.3d 237, 238-39 (Colo. 2006).

The single subject requirement has two important purposes: (1) it prevents “voter fraud and surprise caused by items concealed within a lengthy or complex proposal,” and (2) it ensures that multiple incongruous subjects are not combined “for the purpose of enlisting in support of the measure the advocates of each measure, and thus securing the enactment of measures that could not be carried upon their merits.” *In re Proposed Initiative for 1999-2000 #29*, 972 P.2d 257, 261 (Colo. 1999). To evaluate whether an initiative effectuates or carries out only one general object or purpose, a court looks first to the text of the proposed initiative. *In re #74*, 136 P.3d at 239. The single-subject requirement is met if the “matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous.” *Id.*

Where, as here, an initiative advances separate and distinct purposes, the fact that those purposes “relate to a broad concept or subject is insufficient to satisfy the single subject requirement.” *In re Title, Ballot Title, Submission Clause for 2009-2010 #91*, 235 P.3d 1071, 1076 (Colo. 2010); *In re Title, Ballot Title & Submission Clause for Proposed Initiative 2001-02 #43*, 46 P.3d 438, 446 (Colo. 2002). Purposes are separate and distinct when they bear “no necessary or proper connection to the initiative’s subject[.]” *In re #91*, 235 P.3d at 1076. Inclusion of provisions proposing a change in governmental powers which are not directly

related to or do not implement the central purpose of the proposed initiative violates the single subject requirement. *Id.* at 1077. And where, as here, the proposed measure affects more than one provision of TABOR, this Court has repeatedly held that the measure violates the single subject requirement. *See In re #74*, 136 P.3d at 241-42; *see also* Colo. Const. art. X, § 20. In *In re #74*, the proposed measure sought to create time limits for (1) tax measures; (2) public debt authorizations; and (3) voter-authorized relief from spending limits. *Id.* at 241. The proponents argued that the measure contained only a single subject—time limits for ballot issues that “would raise, continue, create, or increase taxes.” *Id.* The Court disagreed, holding that the measure violated the single subject requirement, as it affected both the revenue and spending provisions of TABOR, which represent distinct subjects, operating “separately and independently” from each other. *Id.* at 242. Each category represented a single subject which the voters were “entitled to have . . . considered upon its own merits,” despite the fact that all three were encompassed in TABOR. *Id. See also In re Proposed Initiative 1996-4*, 916 P.2d 528, 533 (Colo. 1996) (initiative repealing various provisions of TABOR related to spending and revenue limits, elections, local responsibility for state mandated programs, and emergency services, which the proponents sought to encompass within a single stated purpose of “limiting government spending,”

violated the single subject requirement); *Matter of Title, Ballot Title, Submission Clause, Summary for 1997-98 # 84*, 961 P.2d 456, 460 (Colo. 1998) (initiative proposing local tax cuts and requiring replacement of affected local revenue through transfer of funds from the state’s general fund violated the single subject requirement).

Here, Initiative 45 contains at least four separate and independent purposes: (1) establishing a state-owned bank; (2) allowing the bank, as an agent of the state, to issue bonds, circumventing TABOR’s prohibition on such obligations without voter approval, Colo. Const. art. X, § 20(4)(b), and the prohibition on multi-year public debt, Colo. Const. art. XI, § 3<sup>2</sup>; (3) allowing unlimited transfers of funds, including borrowed funds, from the bank to the state’s general fund to be appropriated by the legislature, circumventing the balanced budget provision of the Colorado Constitution, Colo. Const. art. X, § 16<sup>3</sup>; and (4) exempting those funds from TABOR’s caps on government revenues and spending, Colo. Const. art. X, § 20(7).<sup>4</sup>

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<sup>2</sup> See Ex. A, Section (4) (“[The bank’s powers] shall include the power to issue bonds, if deemed necessary by the board of directors of the bank[.]”)

<sup>3</sup> See Ex. A, Section (9) (“The state bank may transfer funds, from time to time, to the general fund of the state of Colorado. Such amounts shall not be subject to or counted against any limitations imposed by any state constitutional, state statutory, state chartered, or other state or local provisions.”).

<sup>4</sup> *Id.*

Purposes (2) through (4) are separate and distinct subjects which are not necessarily or properly connected to the central purpose of Initiative 45. *See In re #74*, 136 P.3d at 239 (“The single-subject requirement is not violated if the ‘matters encompassed are necessarily or properly connected to each other rather than disconnected or incongruous.’”). None of these additional powers granted to the state bank—which encompass broad changes to existing governmental powers—are necessary for the establishment of a state-owned bank. A reallocation of governmental authority and control which does not “share a unifying or common objective” encompassed within a single initiative violates the single subject requirement. *See In Matter of Title, Ballot Title & Submission Clause, & Summary for 1997-1998 #64*, 960 P.2d 1192, 1198 (Colo. 1998).

Here, establishing a state-owned bank—a state agent—and granting it powers which the state of Colorado is otherwise restricted from exercising by several constitutional provisions, substantially rearranges and reallocates governmental authority, and circumvents several independent constitutional mandates. Such broad changes to the governmental power do not share the “unifying or common objective” of establishing a state-owned bank to hold the revenues of the state of Colorado. They are unnecessary and unrelated to the ability of the state to own and operate a bank and manage its deposits.

## **CONCLUSION**

For these reasons, the Board properly found that it lacked jurisdiction to set title for the Initiative because it violates the single subject requirement set forth in the Colorado Constitution. Ms. Walker respectfully requests that this Court affirm the Title Board's action declining to set title for the Initiative.

DATED: October 21, 2013.

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*s/ Thomas M. Rogers*

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2013, I filed a true and correct copy of the foregoing **OPENING BRIEF OF RESPONDENT BARBARA M. A. WALKER** using the ICCES electronic filing system and served electronic copies to the following:

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**2014 Initiative for an Amendment to the Colorado Constitution  
to establish a state-owned bank in Colorado**

**#45**

**The original final typewritten draft  
which has the final language for printing of the proposed initiative**

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**JUL 23 2013**

**ELECTIONS/LICENSING  
SECRETARY OF STATE**

**S. WARD**

**4:30 P.M.**

**EXHIBIT A**

Proposed Constitutional Amendment for the State of Colorado  
To Establish a Publicly Owned State Bank  
To be Numbered as Article X, Section 22

Be it Enacted by the People of the State of Colorado:

In the constitution of the state of Colorado, **add** section 22 to Article X as follows:

**Section 22. State-owned bank. Statement of intent.** (1)(a) THE STATE OF COLORADO DESIRES TO ESTABLISH A STATE-OWNED BANK IN ORDER TO STRENGTHEN ITS ECONOMY AND PROTECT IT FROM THE CYCLICAL UPS AND DOWNS CAUSED BY THE PRIVATE BANKS AND FINANCIERS WHO CONTROL MONEY CREATION AND CREDIT REGULATION PROCESSES IN THE UNITED STATES.

(b) MANY OF THE ORIGINAL THIRTEEN COLONIES OF THE UNITED STATES AND THE CURRENT STATE OF NORTH DAKOTA, AS WELL AS MANY NATIONS WORLDWIDE, HAVE SHOWN THAT TRUE AND SUSTAINED PROSPERITY COMES IN LARGE PART FROM PUBLIC MONEYS CREATED AND MANAGED IN THE PUBLIC INTEREST.

(2) **Effective date.** THE EFFECTIVE DATE OF THIS SECTION SHALL BE JANUARY 1, 2015.

(3) **Term definitions.**

(a) "SOUND BANKING PRACTICES" MEANS PRACTICES GENERALLY FOLLOWED BY PUBLIC NON-PROFIT BANKS, SUCH AS THE BANK OF NORTH DAKOTA, THAT ARE OPERATED IN THE PUBLIC INTEREST, AS OPPOSED TO THE SPECULATIVE AND FRAUDULENT PRACTICES OF PRIVATE FOR-PROFIT BANKS, WHICH ARE OPERATED SOLELY ON THE INTERESTS OF A SMALL GROUP OF FINANCIERS.

(b) "ADEQUATE CAPITALIZATION OF THE BANK" MEANS MEETING THE RESERVE REQUIREMENTS NECESSARY TO CREATE LOANS THAT ENABLE THE STATE OF COLORADO TO MEET THE OBJECTIVES LISTED IN SUBSECTION (4) OF THIS SECTION.

(c) "SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS" MEANS CONSIDERATIONS FOCUSED ON THE PUBLIC INTEREST, PARTICULARLY THOSE OF THE STATE OF COLORADO, SUCH AS THOSE ENUMERATED IN SUBSECTION (4) OF THIS SECTION.

(d) "ANY LIMITATIONS IMPOSED BY ANY STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS" MEANS ANY AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO OR COLORADO LAW THAT CONFLICTS WITH OR RESTRICTS THE EXECUTION OF THIS AMENDMENT TO THE CONSTITUTION OF THE STATE OF COLORADO, THE SOLE PURPOSE OF WHICH IS TO ESTABLISH A PUBLICLY OWNED STATE BANK THAT EFFECTIVELY PROMOTES THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO, AS DEFINED IN SUBSECTION (4) OF THIS SECTION.

(4) **Establishment of State-owned Bank.** THE STATE OF COLORADO HEREBY ESTABLISHES A BANK TO BE OWNED BY THE STATE OF COLORADO. THE BANK IS AUTHORIZED TO LEND MONEY AT INTEREST OR AT NO INTEREST TO PROMOTE SUSTAINABLE DEVELOPMENT, COMMERCE, INDUSTRY, AND AGRICULTURE IN THE STATE AND TO PROMOTE HOME OWNERSHIP, MAINTENANCE AND CONSTRUCTION OF NEEDED INFRASTRUCTURE, EDUCATION, PUBLIC HEALTH AND SAFETY, AND OTHER PURPOSES THAT SUPPORT THE GENERAL WELFARE OF THE CITIZENS OF THE STATE OF COLORADO. THE BANK SHALL HAVE ALL THE POWERS AND AUTHORITY OF OTHER BANKS CHARTERED BY THE STATE OF COLORADO. THIS

SHALL INCLUDE THE POWER TO ISSUE BONDS, IF DEEMED NECESSARY BY THE BOARD OF DIRECTORS OF THE BANK, FOR THE SOLE PURPOSE OF ESTABLISHING ADEQUATE CAPITALIZATION OF THE BANK. THE DEBTS AND OBLIGATIONS OF THE BANK ARE BACKED BY THE FULL FAITH AND CREDIT OF THE STATE OF COLORADO THAT SHALL SERVE AS SELF-INSURANCE FOR THE BANK, WHICH SHALL NOT BE REQUIRED TO JOIN THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC). THE REVENUE AND INCOME OF THE BANK SHALL NOT BE LIMITED, NOR SHALL EXPENDITURES AND MANAGEMENT OF ITS REVENUE, INCOME, AND ASSETS BE RESTRICTED, EXCEPT UPON SOUND FINANCIAL AND PUBLIC POLICY CONSIDERATIONS. ALL PROVISIONS OF THIS SUBSECTION ARE SELF-EXECUTING AND SEVERABLE AND SUPERSEDE CONFLICTING STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS.

**(5) Governance of state bank: elected officials:** THE BOARD OF DIRECTORS OF THE BANK SHALL CONSIST OF FIVE MEMBERS WHO SHALL BE ELECTED AS FOLLOWS:

(a) THE STATE LEGISLATURE SHALL, IN A TIMELY FASHION NOT TO EXCEED THREE MONTHS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION, DIVIDE THE STATE INTO FIVE DISTRICTS BY GROUPING THE STATE HOUSE DISTRICTS INTO FIVE CONTIGUOUS DISTRICTS OF ROUGHLY EQUAL POPULATION, WITH DUE RESPECT TO THE RURAL AND URBAN CHARACTERISTICS OF SAID DISTRICTS.

(b) THE INITIAL ELECTION SHALL BE HELD ON THE FIRST TUESDAY IN NOVEMBER, 2015, IN CONJUNCTION WITH THE GENERAL ELECTION, AND INCLUDE CANDIDATES FOR ALL FIVE DISTRICTS, TWO OF WHOM SHALL BE ELECTED FOR AN INITIAL TERM OF TWO YEARS AND THREE OF WHOM SHALL BE ELECTED FOR A TERM OF FOUR YEARS. TWO YEARS LATER, WHEN THE TWO-YEAR TERMS EXPIRE, SAID TWO DISTRICTS SHALL ELECT MEMBERS TO TERMS OF FOUR YEARS. FOUR YEARS AFTER THE INITIAL VOTE, SAID THREE DISTRICTS SHALL ELECT MEMBERS FOR FOUR-YEAR TERMS. THEREAFTER, ALL TERMS FOR ALL DISTRICTS SHALL BE FOR FOUR YEARS. EXCEPT FOR THE INITIAL ELECTION AND ANY RUN-OFF ELECTIONS, EACH ELECTION HELD AFTER THE INITIAL ELECTION SHALL ALSO BE HELD ON THE FIRST TUESDAY IN NOVEMBER IN ODD-NUMBERED YEARS IN CONJUNCTION WITH THE GENERAL ELECTION.

(c) CANDIDATES MUST BE CITIZENS OF THE STATE OF COLORADO FOR AT LEAST FIVE YEARS BEFORE THEY CAN DECLARE THEIR CANDIDACY AND MUST BE RESIDENTS OF THEIR DISTRICT FOR TWO YEARS.

(d) TO BE INCLUDED ON THE BALLOT, CANDIDATES SHALL REGISTER WITH THE SECRETARY OF STATE'S OFFICE, WHICH SHALL PROVIDE AN AUTOMATED ONLINE PROCESS THAT INCLUDES THE OPPORTUNITY FOR EACH CANDIDATE TO LIST THEIR QUALIFICATIONS AND REASONS WHY THEY WANT TO SERVE.

(e) IN THE EVENT THAT NO CANDIDATE WITHIN A DISTRICT RECEIVES A MAJORITY OF VOTES FROM THAT DISTRICT, THE SECRETARY OF STATE SHALL SET A RUN-OFF ELECTION BETWEEN THE TWO CANDIDATES RECEIVING THE MOST VOTES, WHICH SHALL BE HELD WITHIN THIRTY DAYS AFTER THE RESULT OF THE INITIAL ELECTION IS CERTIFIED.

(f) THE GENERAL ASSEMBLY SHALL APPROPRIATE FUNDS AS NECESSARY TO CONDUCT THE ELECTIONS PROVIDED FOR IN THIS SUBSECTION. THE SECRETARY OF STATE SHALL SET ALL ELECTIONS IN ACCORDANCE WITH THIS SUBSECTION. OFFICIALS SO DESIGNATED BY LAW SHALL CONDUCT ALL ELECTIONS SPECIFIED, IN ACCORDANCE WITH THIS SUBSECTION.

(g) THE BANK SHALL COMMENCE OPERATIONS JANUARY 1, 2016.

**(6) Governance of State Bank: Management, employees, and advisors:** (a) THE BOARD OF DIRECTORS SHALL RECEIVE ADVISORY INPUT ON THE GENERAL DIRECTION OF THE BANK FROM A NINE-MEMBER BOARD OF ADVISORS WHOSE MEMBERS REPRESENT A BROAD CROSS-SECTION OF THE STATE, INCLUDING BUSINESS AND INDUSTRY, FARMING, TECHNOLOGY, FINANCE, SMALL BUSINESS, EDUCATION, LABOR, AND EMPLOYMENT, TO BE APPOINTED BY THE GOVERNOR, FOR STAGGERED TERMS OF FOUR YEARS EACH, EXCEPT FOR THE INITIAL APPOINTMENT WHICH SHALL PROVIDE FOUR-YEAR TERMS FOR

FIVE MEMBERS AND TWO-YEAR TERMS FOR FOUR MEMBERS, SUBJECT TO CONFIRMATION BY A MAJORITY OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO. MEMBERS OF THE BOARD OF ADVISORS SHALL BE NOMINATED BY VARIOUS GROUPS WITHIN EACH AREA OF INTEREST IN A MANNER TO BE DETERMINED BY THE GENERAL ASSEMBLY.

(b) THE BOARD OF DIRECTORS SHALL ALSO RECEIVE REGULAR FINANCIAL REPORTS, NO LESS THAN ONCE A MONTH, FROM THE MANAGEMENT OF THE BANK. THE FINANCES OF THE BANK SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT ACCOUNTING FIRM FREE FROM ANY CONFLICTS OF INTEREST WITH THE BANK OR STATE. ALL REPORTS AND THE AUDIT SHALL BE MADE PUBLIC WHEN THEY ARE RECEIVED BY THE BOARD.

(c) EXCEPT FOR THE PRESIDENT OF THE BANK, WHO SHALL BE APPOINTED BY THE BOARD OF DIRECTORS AND SERVE AT THEIR PLEASURE, THE MANAGEMENT AND EMPLOYEES OF THE BANK SHALL BE HIRED ACCORDING TO THE STANDARDS OF THE STATE PERSONNEL SYSTEM, WHICH SHALL ENDEAVOR TO HIRE THE BEST QUALIFIED PERSONS AND COMPENSATE THEM ACCORDINGLY BY SALARY. THE TITLES AND DUTIES OF THE REMAINING TOP FIVE OFFICIALS SHALL BE DETERMINED BY THE BOARD OF DIRECTORS. NO EMPLOYEES OF THE BANK SHALL RECEIVE COMPENSATION IN THE FORM OF COMMISSIONS AND BONUSES. THE PRESIDENT OF THE BANK MUST HAVE SUBSTANTIAL EXPERIENCE IN BANKING. THE MANAGEMENT OF THE BANK SHALL BE RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE BANK, WHICH SHALL FOLLOW THE GENERAL OBJECTIVES SET FORTH BY THIS SECTION AND, SUBSEQUENTLY, BY THE BOARD OF DIRECTORS.

**(7) Rules and Regulations of State Bank.** FOLLOWING THE COMMENCEMENT OF OPERATIONS ON JANUARY 1, 2016, THE INITIAL MANAGEMENT OF THE BANK, CONSISTING OF THE TOP FIVE OPERATING OFFICIALS OF THE BANK, INCLUDING THE PRESIDENT APPOINTED BY THE BOARD OF DIRECTORS AND THOSE HIRED BY THE PRESIDENT UNDER THE PROTOCOLS OF THE STATE PERSONNEL SYSTEM, SHALL BE CHARGED WITH DRAFTING THE RULES AND REGULATIONS OF THE BANK, SUBJECT TO CONSIDERATION OF RECOMMENDATIONS BY THE ADVISORY BOARD AND APPROVAL OF THE BOARD OF DIRECTORS OF THE BANK.

**(8) Capitalization of State Bank.** THE CAPITALIZATION OF THE BANK MAY INCLUDE ANY PROCEEDS FROM TAXES AND OTHER REVENUES AND FUNDS OF THE STATE, INCLUDING OTHER FUNDS SUCH AS MAY BE COLLECTED CURRENTLY FOR THE STATE BY OTHER BANKS, THAT ARE NOT OTHERWISE OBLIGATED, AND FUNDS GENERATED BY BONDS, IF DEEMED NECESSARY BY THE BOARD OF DIRECTORS OF THE BANK IN ORDER TO GENERATE SUFFICIENT CAPITALIZATION OF THE BANK, AS NOTED IN SUBSECTION (3) OF THIS AMENDMENT, SUBJECT TO SOUND BANKING PRACTICES AND THE RULES AND REGULATIONS OF THE STATE BANK. SPECIFICALLY ALLOCATED FUNDS AND OTHER ASSETS OF THE STATE NORMALLY HELD BY FINANCIAL INSTITUTIONS SHALL BE DEPOSITED AND HELD BY THE STATE BANK, INCLUDING MONEYS HELD BY OTHER BANKS FOR THE STATE OF COLORADO PRIOR TO THE ESTABLISHMENT OF THE BANK, WHICH SHALL BE TRANSFERRED TO THE BANK WITHIN TEN WORKING DAYS AFTER THE BANK BEGINS OPERATION. THE BOARD OF DIRECTORS, UPON RECEIVING THE ADVICE AND RECOMMENDATIONS FROM THE MANAGEMENT OF THE BANK, SHALL DETERMINE THE MEANS FOR ADDITIONAL CAPITALIZATION AS REQUIRED TO MEET THE OBJECTIVES OF THE BANK AS SET FORTH IN THIS SECTION.

**(9) Transfer of funds from the state bank to the general fund of the state of Colorado.** THE STATE BANK MAY TRANSFER FUNDS, FROM TIME TO TIME, TO THE GENERAL FUND OF THE STATE OF COLORADO. SUCH AMOUNTS SHALL NOT BE SUBJECT TO OR COUNTED AGAINST ANY LIMITATIONS IMPOSED BY ANY STATE CONSTITUTIONAL, STATE STATUTORY, STATE CHARTERED, OR OTHER STATE OR LOCAL PROVISIONS. SUCH FUNDS MAY BE USED TO ENABLE THE STATE TO EXPAND, MAINTAIN, OR RESTORE ESSENTIAL SERVICES AND FACILITIES AND TO ENABLE THE STATE TO MAINTAIN A BALANCED BUDGET. SURPLUS FUNDS IN THE ACCOUNTS OF THE BANK SHALL NOT BE INCLUDED IN THE

DETERMINATION OF A BALANCED BUDGET. SUCH FUNDS SHALL SERVE AS OPERATING CAPITAL FOR THE BANK, AT THE DISCRETION OF THE BOARD OF DIRECTORS AND MANAGEMENT OF THE BANK.