

AGENDA
Joint Budget Committee Meeting: Higher Education Revenue Bond Intercept Program
January 14, 2014 - 1:30-2:30 pm
Legislative Services Building, JBC Hearing Room

State Treasurer's Office: Brett Johnson, Deputy Treasurer (Questions 1-3)

Office of Legislative Legal Services: Jason Gelender, Esther van Mourik (Question 4)

Department of Higher Education: Mark Cavanaugh, Tonya Covarrubias (Additional information, as needed)

1. Description of the Higher Education Revenue Bond Intercept Program and recent changes pursuant to S.B. 13-199 (Higher Education Revenue Bond Intercept Program). What are the roles of the various participants (governing board trustees, Department of Higher Education, Treasurer, Capital Development Committee, JBC) in reviewing Higher Education Revenue Bond Intercept projects? What entity/entities examine the institution's financial capacity for assuming the proposed debt for these kinds of projects?
2. What is the role of the Treasurer's Office in bonding for higher education versus its role for other state agencies? Are there different types of involvement for different types of higher education projects (Federal Mineral Lease, Revenue Bond Intercept, etc.)?
3. Financial liability: What is the impact of the State's bond rating on higher education institutions and the impact of the institutions' financial performance on the State's bond rating? What is the State's financial obligation for Revenue Bond Intercept projects versus projects an institution pursues under its own bond rating?
4. Does an institution's status as an enterprise under Article X, Section 20 of the Constitution (TABOR) affect its ability to use the Revenue Bond Intercept Program? Could any Revenue Bond Intercept Program provisions be interpreted as in conflict with the State Constitution?

Attachment – Section 23-5-139, C.R.S. (Revenue Bond Intercept Program)

TITLE 23. POSTSECONDARY EDUCATION
STATE UNIVERSITIES AND COLLEGES
ARTICLE 5. GENERAL PROVISIONS

C.R.S. 23-5-139 (2013)

23-5-139. Higher education **revenue bond intercept** program

(1) (a) The state treasurer, on behalf of a state-supported institution of higher education, as described in section 23-1-102 (2) and referred to in this section as an "institution", shall make payment as provided in this section of principal and interest on bonds to which this section applies unless the governing board of the institution adopts a resolution stating that it will not accept on behalf of the institution payment of principal of and interest on bonds as provided in this section. Any such resolution shall be adopted prior to issuance or incurrence of the bonds to which it applies. Following adoption of the resolution, the institution shall provide written notice to the state treasurer of its refusal to accept the payment. The refusal to accept payment shall take effect upon the date the state treasurer receives the written notice and shall continue in effect until the date the state treasurer receives written notice from the institution that the governing board of the institution has adopted a resolution rescinding the refusal to accept payment pursuant to this section. Notwithstanding any provision of subsections (2) to (7) of this section to the contrary, the state treasurer shall not make payment of principal of or interest on bonds on behalf of an institution that provides written notice of its refusal to accept payment by the state treasurer on its behalf as provided in this paragraph (a) until the state treasurer receives written notice of the rescission of refusal to accept payment.

(b) This section applies to revenue bonds issued by an institution pursuant to this article on or after April 26, 2013, and to refunding bonds issued by an institution pursuant to article 54, 56, or 57 of title 11, C.R.S., on or after April 26, 2013, if, on the date the bonds are issued:

(I) The governing body of the institution has:

(A) A credit rating in one of the three highest categories, without regard to modifiers within a category, from at least one nationally recognized statistical rating organization and, if more than one such organization has rated an institution, no credit rating that is in a category below the three highest categories, without regard to modifiers within a category; and

(B) A debt service coverage ratio of at least one and one-half to one, measured by dividing the institution's net revenue available for annual debt service over the total amount of annual debt service subject to this article and the annual debt service to be issued pursuant to this article; and

(II) The pledged revenues for the issue include not less than:

(A) The net revenues of auxiliaries;

(B) Ten percent of tuition if the institution is an enterprise, as defined in section 24-77-102

(3), C.R.S.;

(C) Indirect cost recovery revenues, if any;

(D) Facility construction fees designated for bond repayment, if any; and

(E) Student fees and ancillary revenues currently pledged to existing bondholders.

(c) The state treasurer may exempt an institution from the requirements of subparagraph (1) of paragraph (b) of this subsection (1) if the revenue bonds to be issued are refunding bonds that result in cost savings to the institution.

(2) Whenever the paying agent has not received payment of principal of or interest on bonds or other obligations to which this section applies on the business day immediately prior to the date on which such payment is due, the paying agent shall so notify the state treasurer and the institution by telephone, facsimile, or other similar communication, followed by written verification, of such payment status. The state treasurer shall immediately contact the institution and determine whether the institution will make the payment by the date on which it is due.

(3) If an institution indicates that it will not make a payment by the date on which it is due, or if the state treasurer is unable to contact the institution, the state treasurer shall forward the amount in immediately available funds necessary to make the payment of the principal of or interest on the bonds or other obligations of the institution to the paying agent. The state treasurer shall recover the amount forwarded by withholding amounts from the institution's payments of the state's fee-for-service contract with the institution, from any other state support for the institution, and from any unpledged tuition moneys collected by the institution. The total amount withheld in a month from the state's fee-for-service contract with the institution for each occasion on which the state treasurer forwards an amount pursuant to this section shall not exceed one-twelfth of the amount forwarded. The state treasurer shall not withhold for more than twelve consecutive months for each occasion on which the treasurer forwards amounts pursuant to this section. Notwithstanding any other provision of this subsection (3), an institution may elect to make early repayment of all or any portion of an amount forwarded by the state treasurer on behalf of the institution pursuant to this section.

(4) The amounts forwarded to the paying agent by the state treasurer pursuant to subsection (3) of this section shall be applied by the paying agent solely to the payment of the principal of or interest on such bonds or other obligations of the institution. The state treasurer shall notify the department of higher education and the general assembly of amounts withheld and payments made pursuant to this section. Institutions that have a debt service payment forwarded to the paying agent by the state treasurer shall not request a supplemental general fund appropriation or budget amendment for the amount forwarded in order to replace withheld fee-for-service revenue.

(5) Any institution with a bond issue for which this section applies shall file with the state treasurer a copy of the resolution that authorizes the issuance of bonds; a copy of the official statement or other offering document for the bonds; the agreement, if any, with the paying agent for the bonds; and the name, address, and telephone number of the paying agent. The failure of any institution to file such information shall not affect the obligation of the state treasurer to withhold the state's fee-for-service contract payments to the institution.

(6) As provided in section 11 of article II of the state constitution, the state hereby covenants with the purchasers and owners of bonds issued by institutions that it will not repeal, revoke, or rescind the provisions of this section or modify or amend this section so as to limit or impair the rights and remedies granted by this section; except that nothing in this subsection (6) shall be deemed or construed to require the state to continue the payment of state assistance to any institution or to limit or prohibit the state from repealing, amending, or modifying any law relating to the amount of state assistance to institutions or the manner of payment or the timing thereof. Nothing in this section shall be deemed or construed to create a debt of the state with respect to such bonds within the meaning of any state constitutional provision or to create any other liability except to the extent provided in this section.

(7) Whenever the state treasurer is required by this section to make a payment of principal of or interest on bonds or other obligations on behalf of an institution, the department of higher education shall initiate an audit of the institution to determine the reason for the nonpayment and to assist the institution, if necessary, in developing and implementing measures to ensure that future payments will be made when they are due.

HISTORY: Source: L. 2008: Entire section added, p. 2160, § 1, effective June 4. L. 2013: IP(1)(b) and (1)(b)(I) amended and (1)(c) added, (SB 13-199), ch. 146, p. 470, § 1, effective April 26.