

CHAPTER 269

EDUCATION - UNIVERSITIES AND COLLEGES

SENATE BILL 00-164

BY SENATORS Lamborn, Congrove, Evans, Owen, Powers, and Tebedo;
also REPRESENTATIVES McElhany, Dean, Hefley, Stengel, and Tapia.

AN ACT

CONCERNING THE COLORADO STUDENT OBLIGATION BOND AUTHORITY.

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

SECTION 1. 23-3.1-201, Colorado Revised Statutes, is amended to read:

23-3.1-201. Legislative declaration. The general assembly hereby declares that the availability of improved access to and choice of higher education opportunities in this state will benefit the residents of the state and that the establishment of a student obligation bond program, with proceeds of bonds to be used for the purchase or making of student obligations or the making of authority loans, and the establishment of a PREPAID postsecondary education expense program will enhance the availability of student obligations and assist residents in meeting the expenses incurred in availing themselves of higher education opportunities. It is the intent of the general assembly in enacting this part 2 to create the Colorado student obligation bond authority, which SHALL BE A DIVISION WITHIN THE DEPARTMENT OF HIGHER EDUCATION AND WHICH AUTHORITY shall make or purchase student obligations, shall make authority loans, and shall develop and administer a PREPAID postsecondary education expense program. ~~and to vest the authority with powers to enable the authority to accomplish such purposes.~~ This part 2 shall be liberally construed to accomplish the intentions expressed in this section.

SECTION 2. 23-3.1-202, Colorado Revised Statutes, is amended to read:

23-3.1-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Advance payment contract" means a contract entered into by the authority, as defined in subsection (1.2) of this section, and a purchaser in connection with the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

prepaid POSTSECONDARY EDUCATION expense program as authorized in section 23-3.1-206.7.

(1.2) "Authority", PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, means the Colorado student obligation bond authority ~~created by~~ EXISTING AS AN INDEPENDENT PUBLIC BODY POLITIC IN ACCORDANCE WITH SECTION 23-3.1-203. ON AND AFTER THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, "AUTHORITY" MEANS THE COLORADO STUDENT OBLIGATION BOND AUTHORITY TRANSFERRED TO THE DEPARTMENT OF HIGHER EDUCATION AND EXISTING AS A DIVISION OF THAT DEPARTMENT PURSUANT TO SECTION 23-3.1-203.

(1.5) "Authority loan" means a loan made by the authority, from bond proceeds or other moneys available, to one or more institutions of higher education located in Colorado, to a Colorado nonprofit corporation acting on behalf of one or more of such institutions of higher education, to the division, or to purchasers and made for the purpose of funding student obligations or payments to be made under advance payment contracts.

(2) "Board" means the board of directors of the authority.

(3) "Bond" means any bond, note, debenture, interim certificate, or other evidence of indebtedness authorized to be issued by the authority pursuant to this part 2, including refunding bonds.

(4) "Bond resolution" means the resolution authorizing the issuance of or providing the terms and conditions related to bonds issued pursuant to this part 2 and includes any trust agreement or trust indenture providing terms and conditions for such bonds.

(4.1) "CONTRACT PRICE" MEANS THE AGGREGATE OF ALL PAYMENT AMOUNTS TO BE REMITTED DURING THE CONTRACT TERM BY PURCHASERS UNDER THE OUTSTANDING ADVANCE PAYMENT CONTRACTS AS PROVIDED ON THE RESPECTIVE DATES OF EXECUTION THEREOF.

~~(4.2) "Depositor" means any person who makes deposits in accordance with a savings contract.~~

(4.3) "DIRECTOR" MEANS THE EXECUTIVE OFFICER OF THE COLORADO STUDENT OBLIGATION BOND AUTHORITY APPOINTED PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, IN ACCORDANCE WITH SECTION 23-3.1-203 AND, ON AND AFTER THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, IN ACCORDANCE WITH SECTION 23-3.1-203.

~~(4.4) "Education expense program" means the Colorado postsecondary education expense program created under this part 2, which may include a prepaid expense program or a savings program, or both.~~

~~(4.5) "Executive director" means the executive director of the Colorado~~

~~commission on higher education.~~ "EXCESS AMOUNT" MEANS THE ASSETS IN THE COLORADO PREPAID POSTSECONDARY EDUCATION EXPENSE TRUST FUND THAT THE ACTUARIAL CALCULATION UNDER SECTION 23-3.1-206.7 (5) DEMONSTRATES ARE IN EXCESS OF THE ASSETS REQUIRED TO PAY THE OBLIGATIONS OF THE PREPAID EXPENSE TRUST FUND WITH A LIKELIHOOD OF SUCH SUFFICIENCY OF AT LEAST NINETY-FIVE PERCENT.

(4.7) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HIGHER EDUCATION.

(4.8) "EXECUTIVE OFFICER", PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, MEANS THE EXECUTIVE OFFICER OF THE AUTHORITY. ON AND AFTER THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, "EXECUTIVE OFFICER" MEANS THE DIRECTOR OF THE COLORADO STUDENT OBLIGATION BOND AUTHORITY TRANSFERRED TO THE DEPARTMENT OF HIGHER EDUCATION AND EXISTING AS A DIVISION OF THAT DEPARTMENT PURSUANT TO SECTION 23-3.1-203.

~~(5) (4.9) "Executive officer" means the executive officer of the authority.~~ "EXPECTED TUITION UNITS" MEANS THE TOTAL TUITION UNITS PAID FOR AND NOT DISTRIBUTED OR REFUNDED TOGETHER WITH THE PORTION OF TUITION UNITS AVAILABLE FOR PURCHASE UNDER OUTSTANDING ADVANCE PAYMENT CONTRACTS THAT, BASED ON AN ACTUARIAL PROJECTION, ARE EXPECTED TO BE PAID FOR AND BECOME OBLIGATIONS OF THE COLORADO PREPAID POSTSECONDARY EDUCATION EXPENSE TRUST FUND.

(5) "INVESTABLE ASSETS" MEANS CASH AND CASH EQUIVALENTS ON DEPOSIT IN THE PREPAID EXPENSE TRUST FUND AND INVESTMENTS OF AMOUNTS DEPOSITED TO THE PREPAID EXPENSE TRUST FUND.

(5.1) "Prepaid expense program" means the Colorado prepaid postsecondary education expense program authorized in section 23-3.1-206.7.

(5.2) "Prepaid expense trust fund" means the Colorado prepaid postsecondary education expense trust fund established by the authority in accordance with section 23-3.1-206.7 (5) AND TRANSFERRED ON THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, PURSUANT TO SECTION 23-3.1-206.7 (5).

(5.3) "Purchaser" means a person who makes or is obligated to make a payment or payments in accordance with an advance payment contract on behalf of a qualified beneficiary.

(5.5) "Qualified beneficiary" means a person identified in an advance payment contract ~~or a savings contract~~ as the recipient of moneys or benefits to be disbursed in accordance with an advance payment contract. ~~or a savings contract.~~

~~(5.6) "Savings contract" means a contract entered into by the authority and a depositor in connection with the savings program.~~

(5.7) "~~Savings program~~" means the ~~Colorado postsecondary education expense savings program authorized by section 23-3.1-206.7.~~

(5.8) "~~Savings trust fund~~" means the ~~Colorado postsecondary education expense savings trust fund established by the authority in accordance with section 23-3.1-206.7 (5).~~

(5.9) "State institution" shall have the same meaning as provided in section 23-3.3-101 (4).

(6) "Student" means a student who, under rules promulgated by the division, is enrolled or accepted for enrollment at an eligible institution and who is making suitable progress in his OR HER education toward obtaining a degree or other appropriate certification in accordance with standards promulgated by the division.

(7) "Student obligations" means student obligation notes and other debt obligations evidencing loans to residents for higher education purposes, or to any person for the purposes of consolidating or refinancing loans for higher education purposes, which are either guaranteed student loans, educational loans, or loans eligible for consolidation or refinancing under Part B of Title IV of the federal "Higher Education Act of 1965", as amended, which the authority may make, acquire, buy, sell, or endorse pursuant to this part 2, or which one or more institutions of higher education located in Colorado, or a Colorado nonprofit corporation acting on behalf of one or more of such institutions of higher education, or the division may make from or in anticipation of an authority loan and which include a direct or indirect interest, in whole or part, of the notes or obligations.

(8) "Tuition" means the quarter, semester, or term charges imposed by a state institution on residents of the state and such fees or charges as may be included in the advance payment contract at the option of the authority.

SECTION 3. 23-3.1-203, Colorado Revised Statutes, is amended to read:

23-3.1-203. Authority - creation - membership - transfer of personnel.

(1) ~~There is hereby created an independent public body politic and corporate to be known as the Colorado student obligation bond authority. Said authority is constituted a public instrumentality, and its exercise of the powers conferred by this part 2 shall be deemed and held to be the performance of an essential public function. The authority shall be a body corporate and a political subdivision of the state and shall not be an agency of state government and shall not be subject to administrative direction by any department, commission, board, or agency of the state.~~ EFFECTIVE THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, THE COLORADO STUDENT OBLIGATION BOND AUTHORITY SHALL BE TRANSFERRED TO THE DEPARTMENT OF HIGHER EDUCATION, AND SHALL BECOME A DIVISION THEREOF. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, ON AND AFTER THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, THE AUTHORITY SHALL EXERCISE ITS POWERS, DUTIES, AND FUNCTIONS UNDER THE DEPARTMENT OF HIGHER EDUCATION AS IF IT WERE TRANSFERRED BY A **TYPE 2** TRANSFER UNDER THE PROVISIONS OF THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S. THE

DIRECTOR SHALL BE APPOINTED BY THE EXECUTIVE DIRECTOR AND SHALL FUNCTION AS THE EXECUTIVE OFFICER OF THE AUTHORITY. THE DIRECTOR, WITH THE APPROVAL OF THE EXECUTIVE DIRECTOR, SHALL EMPLOY SUCH PROFESSIONAL AND CLERICAL PERSONNEL AS MAY BE DEEMED NECESSARY TO CARRY OUT THE DUTIES AND FUNCTIONS OF THE AUTHORITY. SUCH PERSONNEL SHALL RECEIVE COMPENSATION FOR THEIR SERVICES AS DETERMINED BY THE DIRECTOR. THE DIRECTOR AND ALL PERSONNEL OF THE AUTHORITY ARE DECLARED TO HOLD EDUCATIONAL OFFICES AND TO BE EXEMPT FROM THE STATE PERSONNEL SYSTEM.

(2) (a) ~~The governing body of the authority shall be a board of directors which shall consist of nine members. Members shall be appointed by the governor, with the consent of the senate. Such members shall be residents of the state. No more than five of the members shall be of the same political party. All appointments made on or after July 1, 1984, and prior to June 15, 1987, shall be for terms of six years; except that the three members appointed on July 1, 1984, shall serve for terms of four, five, and six years, respectively. In addition, the three members appointed on July 1, 1984, and their successors, shall be appointed from among persons who are or have recently been responsible for the development of higher education policy in Colorado. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, C.R.S. Thereafter the term of office of each member shall be four years.~~ EFFECTIVE THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, THE BOARD OF DIRECTORS OF THE AUTHORITY, AS IT EXISTED PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, SHALL BE TRANSFERRED WITH THE AUTHORITY TO THE DEPARTMENT OF HIGHER EDUCATION. THE BOARD SHALL CONTINUE TO CONSIST OF NINE MEMBERS WHO SHALL CONTINUE TO BE APPOINTED BY THE GOVERNOR, WITH THE CONSENT OF THE SENATE. SUCH MEMBERS SHALL BE RESIDENTS OF THE STATE. THE TERM OF OFFICE OF EACH MEMBER SHALL BE FOUR YEARS; EXCEPT THAT, OF THE APPOINTMENTS MADE ON OR AFTER THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, AND PRIOR TO JULY 1, 2000, THREE MEMBERS SHALL SERVE FOR TERMS OF TWO, THREE, AND FOUR YEARS, RESPECTIVELY. ~~All terms shall expire on June 30 of the last year of the term.~~ Each member shall serve until his OR HER successor has been appointed by the governor and qualified. Any member shall be eligible for reappointment. The governor shall fill any vacancy by appointment for the remainder of an unexpired term. Any member appointed by the governor when the general assembly is not in regular session, whether appointed for an unexpired term or for a full term, shall be deemed to be duly appointed and qualified until the appointment of such member is approved or rejected by the senate. Such appointment shall be submitted to the senate for its approval or rejection during the next regular session of the general assembly following the appointment.

(b) Any member of the board appointed by the governor may be removed by the governor. ~~for misfeasance, malfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless such notice and hearing have been expressly waived in writing.~~

SECTION 4. 23-3.1-204, Colorado Revised Statutes, is amended to read:

23-3.1-204. Organizational meeting - chairperson - surety bond - conflict of

interest. (1) ~~(a)~~ ON OR BEFORE JULY 15, 2000, a member of the board, designated by the governor, shall call and convene the initial organizational meeting of the board AFTER TRANSFER OF THE AUTHORITY TO THE DEPARTMENT and shall serve as its ~~chairman~~ CHAIRPERSON pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for ~~the election or appointment of officers;~~ the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting, and annually thereafter, the board shall elect one of its members as ~~chairman~~ CHAIRPERSON and one as ~~vice-chairman~~ VICE-CHAIRPERSON.

~~(b) The authority shall appoint an executive officer and such other personnel as it deems necessary including an associate executive officer who shall not be members of the board and who shall serve at its pleasure. They shall receive such compensation for their services as determined by the board.~~

(2) The executive officer, ~~the associate executive officer~~ DIRECTOR or any other person designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the board AND the minute books or journal of the board. ~~and its official seal.~~ Said ~~executive officer, associate executive officer,~~ DIRECTOR or other person may cause copies to be made of all minutes and other records and documents of the board and may give certificates ~~under the official seal of the authority~~ to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates.

(3) The board may delegate, by resolution, to one or more of its members or to its ~~executive officer or associate executive officer~~ DIRECTOR such powers and duties as it may deem proper and to its ~~executive officer or associate executive officer,~~ DIRECTOR or any other person designated by the board, the power to fix the interest rates of any particular issue, subject to such limitations as shall be prescribed by the board by resolution.

(4) Before the issuance of any bonds under this part 2, the ~~executive officer and associate executive officer~~ DIRECTOR shall ~~each~~ execute a surety bond in the penal sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the penal sum of fifty thousand dollars or, in lieu thereof, the ~~chairman~~ CHAIRPERSON of the board shall execute a blanket bond covering each member of the board, the ~~executive officer, the associate executive officer,~~ DIRECTOR, and the employees of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(5) Any member of the board shall disqualify himself OR HERSELF from voting on any issue in which he OR SHE has a conflict of interest unless such member has disclosed such conflict of interest in compliance with section 18-8-308, C.R.S.

SECTION 5. 23-3.1-205, Colorado Revised Statutes, is amended to read:

23-3.1-205. Meetings of board - quorum - expenses. (1) ~~Until July 1, 1984, six members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers and, thereafter, five members shall constitute such~~

~~a quorum. Action may be taken by the board upon the affirmative vote of at least six of its members until July 1, 1984, and by five of its members thereafter. FIVE MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM. ACTION MAY BE TAKEN BY THE BOARD UPON THE AFFIRMATIVE VOTE OF AT LEAST FIVE OF ITS MEMBERS. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.~~

(2) Pursuant to part 4 of article 6 of title 24, C.R.S., each meeting of the board shall be open to the public. Notice of meetings shall be as provided in ACCORDANCE WITH APPLICABLE LAW. ~~the bylaws of the authority. If a meeting of the board is called for the sole purpose of adopting resolutions authorizing the issuance of bonds, notes, bond anticipation notes, or other obligations by the authority;~~ One or more members of the board may participate in ~~such~~ ANY BOARD meeting and may vote on ~~such~~ resolutions through the usage of telecommunications devices, including, but not limited to, the usage of a conference telephone or similar communications equipment. Such participation through telecommunications devices shall constitute presence in person at such meeting. Such use of telecommunications shall not supersede any requirements for public hearing otherwise provided by law. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board shall be a public record.

(3) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling and lodging expenses, incurred in the discharge of their official duties. Any payments for ~~compensation and~~ expenses shall be paid from funds of the authority.

SECTION 6. Article 3.1 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

23-3.1-205.3. Transfer of property. (1) ON THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, ALL ITEMS OF PROPERTY, REAL AND PERSONAL, INCLUDING OFFICE FURNITURE AND FIXTURES, BOOKS, DOCUMENTS, FUNDS AND ACCOUNTS, AND RECORDS OF THE COLORADO STUDENT OBLIGATION BOND AUTHORITY SHALL BE TRANSFERRED WITH THE COLORADO STUDENT OBLIGATION BOND AUTHORITY TO THE DEPARTMENT OF HIGHER EDUCATION, AND SHALL REMAIN THE PROPERTY OF THE AUTHORITY.

(2) AMOUNTS IN THE EXISTING ADMINISTRATIVE FUND OF THE AUTHORITY TRANSFERRED ON THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, SHALL BE DEPOSITED AS PROVIDED IN SECTION 23-3.1-205.4. FUNDS OF THE AUTHORITY HELD BY A CORPORATE TRUSTEE PURSUANT TO A TRUST INDENTURE SHALL CONTINUE TO BE HELD AND INVESTED IN ACCORDANCE WITH SUCH TRUST INDENTURE. THE PREPAID TUITION EXPENSE FUND SHALL BE TRANSFERRED TO BE HELD BY THE STATE TREASURY AND SHALL BE ADMINISTERED IN ACCORDANCE WITH THE PROVISIONS OF THIS PART 2.

(3) ON AND AFTER THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, WHENEVER THE COLORADO STUDENT OBLIGATION BOND AUTHORITY OR THE BOARD

OF DIRECTORS OF THE COLORADO STUDENT OBLIGATION BOND AUTHORITY IS REFERRED TO OR DESIGNATED BY ANY CONTRACT OR OTHER DOCUMENT OR IN OTHER STATE STATUTORY PROVISIONS, SUCH REFERENCE OR DESIGNATION SHALL BE DEEMED TO APPLY TO THE COLORADO STUDENT OBLIGATION BOND AUTHORITY AS A DIVISION OF THE DEPARTMENT OF HIGHER EDUCATION PURSUANT TO SECTION 23-3.1-203. ALL CONTRACTS ENTERED INTO BY OR ON BEHALF OF THE COLORADO STUDENT OBLIGATION BOND AUTHORITY OR ITS BOARD PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, ARE HEREBY VALIDATED, WITH THE COLORADO STUDENT OBLIGATION BOND AUTHORITY IN THE DEPARTMENT OF HIGHER EDUCATION SUCCEEDING TO ALL RIGHTS AND ASSUMING ALL OBLIGATIONS UNDER SUCH CONTRACTS.

(4) NO SUIT, ACTION, OR OTHER JUDICIAL OR ADMINISTRATIVE PROCEEDING LAWFULLY COMMENCED PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, OR THAT COULD HAVE BEEN COMMENCED PRIOR TO SAID DATE, BY OR AGAINST THE COLORADO STUDENT OBLIGATION BOND AUTHORITY, ITS BOARD OF DIRECTORS, OR ANY OFFICER THEREOF IN SUCH OFFICER'S OFFICIAL CAPACITY OR IN RELATION TO THE DISCHARGE OF THE OFFICIAL'S DUTIES SHALL ABATE BY REASON OF THE TRANSFER OF THE AUTHORITY AND ITS BOARD TO THE DEPARTMENT OF HIGHER EDUCATION.

23-3.1-205.4. Colorado student obligation bond authority fund - creation - control - use. (1) THERE IS HEREBY CREATED IN THE STATE TREASURY THE COLORADO STUDENT OBLIGATION BOND AUTHORITY FUND WHICH SHALL BE UNDER THE CONTROL OF THE AUTHORITY IN ACCORDANCE WITH THE PROVISIONS OF THIS PART 2 AND PART 3 OF THIS ARTICLE. THE MONEYS IN THE COLORADO STUDENT OBLIGATION BOND AUTHORITY FUND SHALL BE INVESTED BY THE STATE TREASURER. EXCEPT AS OTHERWISE ALLOWED BY SECTION 24-36-103 (2), C.R.S., AND EXCEPT FOR AMOUNTS RECEIVED IN CONNECTION WITH THE PREPAID EXPENSE PROGRAM AND THE PROGRAM IN PART 3 OF THIS ARTICLE, ALL MONEYS RECEIVED OR ACQUIRED BY THE AUTHORITY, WHETHER BY APPROPRIATION, GRANT, CONTRACT, GIFT, SALE OR LEASE OF SURPLUS REAL OR PERSONAL PROPERTY, OR ANY OTHER MEANS, WHOSE DISPOSITION IS NOT OTHERWISE PROVIDED FOR BY LAW OR BY A TRUST INDENTURE, AND ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO SAID FUND, INCLUDING MONEYS RECEIVED PURSUANT TO SECTIONS 23-3.1-206 (1) (k) AND 23-3.1-304 (1) (h). THE MONEYS IN THE FUND ARE HEREBY CONTINUOUSLY APPROPRIATED TO THE AUTHORITY AND SHALL REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT TO THE GENERAL FUND OF THE STATE AT THE END OF ANY FISCAL YEAR.

(2) THE MONEYS IN THE COLORADO STUDENT OBLIGATION BOND AUTHORITY FUND MAY BE USED BY THE AUTHORITY FOR THE PAYMENT OF SALARIES AND OPERATING AND ADMINISTRATIVE EXPENSES OF THE AUTHORITY AND FOR THE PAYMENT OF ANY OTHER OBLIGATIONS INCURRED BY THE AUTHORITY IN CARRYING OUT ITS STATUTORY POWERS AND DUTIES.

(3) THE MONEYS IN THE COLORADO STUDENT OBLIGATION BOND AUTHORITY FUND THAT ARE NOT NEEDED FOR IMMEDIATE USE BY THE AUTHORITY MAY BE INVESTED BY THE STATE TREASURER IN INVESTMENTS AUTHORIZED BY SECTIONS 24-36-109,

24-36-112, AND 24-36-113, C.R.S. THE AUTHORITY SHALL DETERMINE THE AMOUNT OF MONEYS IN THE FUND THAT MAY BE INVESTED AND SHALL NOTIFY THE STATE TREASURER IN WRITING OF SUCH AMOUNT.

23-3.1-205.5. Colorado student obligation bond authority - enterprise status.

(1) THE AUTHORITY SHALL CONSTITUTE AN ENTERPRISE FOR THE PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, SO LONG AS THE AUTHORITY RETAINS THE ABILITY TO ISSUE REVENUE BONDS AND THE AUTHORITY RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL REVENUES IN GRANTS, AS DEFINED IN SECTION 24-77-102 (7), C.R.S., FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT CONSTITUTES AN ENTERPRISE PURSUANT TO THIS SUBSECTION (1), THE AUTHORITY SHALL NOT BE SUBJECT TO ANY PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION. AGREEMENTS BETWEEN THE AUTHORITY AND THE STUDENT LOAN DIVISION IN THE DEPARTMENT OF HIGHER EDUCATION FOR THE GUARANTEE OF PAYMENT OF STUDENT LOANS ARE NOT GRANTS FOR PURPOSES OF THE DEFINITION OF ENTERPRISE UNDER SECTION 20 (2) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

(2) FOR PURPOSES OF PART 2 OF ARTICLE 72 OF TITLE 24, C.R.S., THE RECORDS OF THE AUTHORITY AND THE BOARD SHALL BE PUBLIC RECORDS, AS DEFINED IN SECTION 24-72-202 (6), C.R.S., EXCEPT TO THE EXTENT OTHERWISE SPECIFIED BY LAW, REGARDLESS OF WHETHER THE AUTHORITY AND THE BOARD CONSTITUTE AN ENTERPRISE PURSUANT TO SUBSECTION (1) OF THIS SECTION.

23-3.1-205.7. Department of higher education - executive director - powers and duties. IN ADDITION TO ANY OTHER POWERS AND DUTIES SPECIFICALLY GRANTED BY LAW, THE EXECUTIVE DIRECTOR SHALL HAVE SUCH POWERS AND DUTIES AS ARE NOT OTHERWISE GRANTED TO THE AUTHORITY IN THIS PART 2 AND IN PART 3 OF THIS ARTICLE, AND SHALL ALSO HAVE ALL POWERS AND DUTIES NECESSARY TO OVERSEE THE AUTHORITY, INCLUDING, BUT NOT LIMITED TO, ITS MANAGEMENT AND DIRECTION.

SECTION 7. 23-3.1-206, Colorado Revised Statutes, is amended to read:

23-3.1-206. General powers and duties of the authority. (1) In addition to any other powers AND DUTIES specifically granted to the authority in this part 2, the authority has the following powers:

- (a) ~~To have perpetual existence and succession as a body politic and corporate;~~
- (b) To adopt and from time to time amend or repeal ~~bylaws~~ POLICIES for the regulation of its affairs and the conduct of its business, consistent with the provisions of this part 2;
- (c) ~~To sue and be sued;~~
- (d) ~~To have and to use a seal and to alter the same at pleasure;~~
- (e) ~~To maintain an office at such place as it may designate;~~
- (f) To borrow money and issue bonds, notes, bond anticipation notes, or other

obligations ~~for any of its corporate purposes~~ and to fund or refund such obligations as provided in this part 2;

(g) SUBJECT TO THE APPROVAL OF THE EXECUTIVE DIRECTOR, to engage the services of private consultants and legal counsel and to otherwise contract with providers to render professional and technical assistance, advice, and other services in carrying out the purposes of this part 2 AND PART 3 OF THIS ARTICLE WITHOUT REGARD TO THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S.;

(h) To make or participate in the making of student obligations or authority loans;

(i) To purchase or participate in the purchase of student obligations;

(j) To sell or participate in the sale of student obligations;

(k) SUBJECT TO THE APPROVAL OF THE EXECUTIVE DIRECTOR, to collect and pay reasonable fees and charges in connection with making, purchasing, originating, disbursing, and servicing or causing to be made, purchased, originated, disbursed, or serviced student obligations or authority loans by the authority, including payment to the division for services performed for the authority AND PURSUANT TO PART 3 OF THIS ARTICLE WITHOUT REGARD TO THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S.;

(l) To procure ~~from the division or other sources~~ insurance, guarantees, or other credit support with respect to all student obligations made or purchased or all authority loans made by the authority;

(m) To consent, whenever it deems it necessary or desirable in the fulfillment of its ~~corporate~~ purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any student obligation to which the authority is a party, but no such consent shall be made or given if its effect would be to obviate insurance coverage with respect to any student obligation;

(n) To make and execute contracts, including advance payment contracts with purchasers ~~and savings contracts with depositors~~, and all other instruments necessary or convenient for the exercise of its powers and functions under this part 2;

(o) To do all things necessary and convenient to carry out the purposes of this part 2 and in connection with the servicing of student obligations by the authority including sale, public or private, to the student loan marketing association or any successor organization;

(p) ~~To invest moneys in the prepaid expense and savings trust funds in accordance with this part 2;~~

(q) ~~To make reasonable restrictions on the number of participants in, and to impose reasonable time limits on the use of benefits provided by, the education expense program;~~

(r) ~~To establish and collect reasonable administrative fees and charges and impose~~

~~reasonable penalties in connection with the education expense program; and~~

(s) To establish ~~other~~ policies, procedures, and criteria to implement and administer the ~~education~~ PREPAID expense program; AND

(t) TO ASSURE THAT NOTHING SHALL CAUSE THE AUTHORITY TO EXCEED THE LIMITATIONS PRESCRIBED IN SECTION 23-3.1-205.5.

(2) NO ACTIONS TAKEN BY THE AUTHORITY PURSUANT TO THIS SECTION SHALL BE INTERPRETED TO CONSTITUTE OR BECOME AN INDEBTEDNESS, A DEBT, OR A LIABILITY OF THE STATE, NOR SHALL ANY ACTIONS TAKEN BY THE AUTHORITY BE INTERPRETED TO CONSTITUTE THE GIVING, PLEDGING, OR LOANING OF THE FULL FAITH AND CREDIT OF THE STATE.

SECTION 8. 23-3.1-206.7, Colorado Revised Statutes, is amended to read:

23-3.1-206.7. Prepaid expense program. (1) The authority shall develop and administer, in accordance with this part 2, ~~and the rules promulgated pursuant to subsection (7) of this section,~~ the Colorado PREPAID postsecondary education expense program, which program is hereby created. Through the ~~education~~ PREPAID expense program, all or part of tuition or other costs, as determined by the authority, may be paid in advance of or accumulated toward enrollment at state institutions and at such other institutions of higher education and graduate schools as may be approved by the authority.

(2) ~~The authority may establish a prepaid expense program or a savings program, or both, as follows:~~

~~(a) A prepaid expense program shall provide for a payment or payments by a purchaser in favor of a qualified beneficiary in accordance with and pursuant to the terms of an advance payment contract. An advance payment contract shall establish the number of credit hours for which tuition at a state institution has been contracted by the purchaser and shall specify any minimum rate of return guaranteed by the contract. The benefits to be received under any advance payment contract shall be contingent on the continuing actuarial soundness of the prepaid expense program. The amount and number of payments required to be made by a purchaser on behalf of a qualified beneficiary under an advance payment contract shall be determined by the authority based on an actuarial analysis of the prepaid expense trust fund.~~

~~(b) A savings program shall provide for deposits by a depositor in accordance with and pursuant to the terms of a savings contract. A savings contract shall specify any minimum rate of return guaranteed by the contract.~~

(3) No purchaser ~~depositor~~, or qualified beneficiary participating in the ~~education~~ PREPAID expense program shall be classified as a resident for tuition purposes as a result of such participation. Purchasers ~~depositors~~; and qualified beneficiaries shall be required to establish residency status based on the requirements of the state institution at which the qualified beneficiary is seeking to enroll.

(4) The selection by a purchaser in an advance payment contract ~~or a depositor in a savings contract~~ of a particular state institution shall not in any way constitute a

promise or guarantee that a qualified beneficiary will be admitted to any particular state institution or other institution of higher education or allowed to continue enrollment in or graduate from any state institution or other institution of higher education.

(5) (a) The Colorado prepaid postsecondary education expense trust fund is hereby created. The prepaid expense trust fund shall consist of moneys remitted by purchasers, ~~and receivables for moneys due to be remitted in accordance with advance payment contracts,~~ moneys acquired from governmental and private sources, and general fund appropriations, if any. All ~~interest~~ INCOME derived from the deposit and investment of moneys in the prepaid expense trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the prepaid expense trust fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. ON THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, THE PREPAID EXPENSE TRUST FUND, AND ALL MONEYS IN SAID FUND, INCLUDING ALL INTEREST AND EARNINGS IN SAID FUND SHALL BE TRANSFERRED WITH THE AUTHORITY AS PROVIDED IN SECTION 23-3.1-205.3. ALL MONEYS REMITTED BY PURCHASERS AND OTHER MONEYS RECEIVED BY THE AUTHORITY IN CONNECTION WITH THE PREPAID EXPENSE PROGRAM SHALL BE TRANSMITTED BY THE AUTHORITY TO THE STATE TREASURER AND CREDITED TO THE PREPAID EXPENSE TRUST FUND. THE STATE TREASURER SHALL INVEST MONEYS IN THE PREPAID EXPENSE TRUST FUND BASED UPON THE ADVICE AND RECOMMENDATIONS OF THE AUTHORITY AND SHALL MAKE DISBURSEMENTS FROM THE PREPAID EXPENSE TRUST FUND IN CONNECTION WITH THE PREPAID EXPENSE PROGRAM BASED UPON THE DIRECTION OF THE AUTHORITY AND IN A MANNER APPROPRIATE TO CARRY OUT THE PREPAID EXPENSE PROGRAM. ALL INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PREPAID EXPENSE TRUST FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED AND UNENCUMBERED MONEYS IN THE PREPAID EXPENSE TRUST FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(b) ~~The Colorado postsecondary education expense savings trust fund is hereby created. The savings trust fund shall consist of moneys deposited by depositors in accordance with savings contracts, moneys acquired from governmental and private sources, and general fund appropriations, if any. All interest derived from the deposit and investment of moneys in the savings trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the savings trust fund shall remain therein and shall not be credited or transferred to the general fund or any other fund.~~

(c) ~~The authority shall maintain the prepaid expense trust fund and the savings trust fund as separate funds. The authority shall credit all moneys remitted to the authority pursuant to advance payment contracts or otherwise received in connection with the prepaid expense program to the prepaid expense trust fund. The authority shall credit all moneys remitted to the authority pursuant to savings contracts or otherwise received in connection with the savings program to the savings trust fund. Moneys remitted to the authority in connection with the education expense program generally may be credited to either trust fund. THE STATE TREASURER SHALL MAINTAIN ON BEHALF OF THE AUTHORITY THE PREPAID EXPENSE TRUST FUND AS A SEPARATE FUND. THE STATE TREASURER SHALL CREDIT ALL MONEYS REMITTED TO~~

THE STATE TREASURER BY THE AUTHORITY AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (5) TO THE PREPAID EXPENSE TRUST FUND.

(d) ~~The authority may invest moneys in the prepaid expense trust fund, and the savings trust fund, as provided in section 23-3.1-216 (3), and shall administer the funds in a manner appropriate to carry out the education expense program.~~ The authority shall annually evaluate the actuarial soundness of the prepaid expense trust fund. ~~and the savings trust fund:~~ THE AUTHORITY SHALL CONTRACT WITH A PRIVATE CONSULTANT OR CONSULTANTS TO PERFORM AN ACTUARIAL EVALUATION OF THE PREPAID EXPENSE TRUST FUND AND TO PROVIDE FINANCIAL ADVICE TO THE AUTHORITY IN CONNECTION WITH THE PREPAID EXPENSE TRUST FUND. ANY ACTUARIAL REPORT AND WRITTEN FINANCIAL ADVICE SHALL BE PROVIDED BY THE AUTHORITY TO THE STATE TREASURER. If, based upon ~~such~~ AN ACTUARIAL evaluation, the authority determines that ~~either~~ THE PREPAID EXPENSE trust fund is not actuarially sound, the authority may DIRECT THE STATE TREASURER TO distribute the available assets of ~~that~~ THE PREPAID EXPENSE trust fund in a manner permitted by outstanding advance payment ~~or savings~~ contracts. IN CONNECTION WITH THE ANNUAL EVALUATION OF THE PREPAID EXPENSE TRUST FUND, A CALCULATION BASED ON KEY ASSUMPTIONS APPROVED BY THE BOARD SHALL BE MADE BY OR ON BEHALF OF THE AUTHORITY TO DETERMINE WHETHER AN EXCESS AMOUNT EXISTS IN THE PREPAID EXPENSE TRUST FUND. IF, BASED ON THIS CALCULATION, THE AUTHORITY DETERMINES THAT AN EXCESS AMOUNT EXISTS IN THE PREPAID EXPENSE TRUST FUND, THE AUTHORITY SHALL CALCULATE, BY DIVIDING SUCH EXCESS AMOUNT BY THE TOTAL NUMBER OF EXPECTED TUITION UNITS IN THE PREPAID EXPENSE TRUST FUND, THE PORTION OF SUCH EXCESS AMOUNT THAT WOULD BE ATTRIBUTABLE ON A PRO RATA BASIS TO EACH SUCH EXPECTED TUITION UNIT. AT THE TIME THE VALUE OF ANY TUITION UNITS UNDER AN ADVANCE PAYMENT CONTRACT IS DISBURSED FROM THE PREPAID EXPENSE TRUST FUND DURING THE ACADEMIC YEAR IMMEDIATELY FOLLOWING SUCH CALCULATION, THE PORTION OF THE EXCESS AMOUNT ATTRIBUTABLE TO SUCH TUITION UNITS AS A RESULT OF THE CALCULATION MADE PURSUANT TO THIS PARAGRAPH (d) SHALL BE PAID AS PART OF SUCH DISBURSEMENT. THE EXCESS AMOUNT SHALL OTHERWISE REMAIN IN THE PREPAID EXPENSE TRUST FUND AS A PART OF THE STABILIZATION RESERVE.

(e) (I) All expenses of the authority incurred in developing and administering the prepaid expense program shall be payable from the prepaid expense trust fund. The authority may use moneys in the prepaid expense trust fund to reimburse the expenses of the authority incurred in connection with the development and administration of the prepaid expense program. IN NO EVENT SHALL ANNUAL ADMINISTRATION EXPENSES OF THE AUTHORITY EXCEED ONE PERCENT OF THE CONTRACT PRICE. ANY RECOVERY OF DEVELOPMENT COSTS BY THE AUTHORITY SHALL NOT INCLUDE INTEREST OR FINANCE CHARGES. ANY MONEYS IN THE PREPAID EXPENSE TRUST FUND THAT ARE NOT NEEDED FOR IMMEDIATE USE BY THE AUTHORITY SHALL BE INVESTED BY THE STATE TREASURER IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (5) AND WITH THE ACTUARIAL REPORT PROVIDED BY THE AUTHORITY AND IN INVESTMENTS PERMITTED BY SECTION 23-3.1-216 (1) AND (3). THE AUTHORITY SHALL DETERMINE THE AMOUNT OF MONEYS IN THE FUND THAT SHALL BE INVESTED AND SHALL NOTIFY THE STATE TREASURER IN WRITING OF SUCH AMOUNT.

~~(II) All expenses incurred by the authority in developing and administering the savings program shall be payable from the savings trust fund. The authority may use~~

moneys in the savings trust fund to reimburse the expenses of the authority incurred in connection with the development and administration of the savings program.

~~(6) (a) Prior to the development of policies and procedures for the education expense program pursuant to subsection (7) of this section, the authority shall conduct a feasibility study to develop criteria for a prepaid expense program and a savings program and to evaluate the financial soundness of such programs based on such criteria, including a study of the use of private service providers for investment, marketing, and records administration in such programs. The feasibility study shall include, but need not be limited to, consideration of the following criteria to be developed for such a program:~~

~~(f) The circumstances under which the benefits receivable under an advance payment contract or the deposits made under a savings contract may be used either at an institution other than the institution designated in the contract or for a purpose other than higher education expenses;~~

~~(H) The circumstances under which the benefits receivable under an advance payment contract or the deposits made under a savings contract may be transferred from the designated qualified beneficiary to another qualified beneficiary;~~

~~(HH) The basis on which refunds of advance payments may be available from the prepaid expense trust fund and deposits may be disbursed from the savings trust fund;~~

~~(IV) Restrictions on and the basis for termination of advance payment and savings contracts;~~

~~(V) Remedies available upon default under advance payment and savings contracts;~~

~~(VI) The basis the authority will use to set the amount and number of payments for purchasing advance payment contracts in accordance with subsection (2) of this section;~~

~~(VII) Any age limits or other limitations on the persons who may be designated as qualified beneficiaries;~~

~~(VIII) The specific educational costs to be guaranteed by any advance payment contract;~~

~~(IX) The basis for calculation of any benefits receivable under an advance payment contract other than guaranteed tuition;~~

~~(X) The time period within which the benefits receivable under an advance payment contract must be exercised or deposits under a savings contract must be withdrawn;~~

~~(XI) The basis for determination of ownership of the rights and payments to be received under an advance payment contract and of the deposits under a savings contract; and~~

(XII) ~~The length and timing of the annual period during which advance payment contracts may be purchased and savings contracts may be entered into.~~

~~(b) The authority shall cooperate and consult with the office of the governor, the office of the state treasurer, the commission, the governing boards of the state institutions of higher education, students, private institutions, and other interested institutions in conducting the feasibility study. The authority shall periodically consult with the education committees of the senate and the house of representatives and with the joint budget committee in evaluating the feasibility of a fiscally sound education expense program.~~

~~(c) The authority shall present its findings regarding the feasibility of an education expense program at a joint meeting of the education committees of the house of representatives and the senate no later than December 1, 1996. During such presentation, the authority shall solicit comments and suggestions regarding its findings and the proposed program from the members of the committees and shall recommend whether to proceed to implement a program and whether any laws regarding the education expense program should be amended or repealed.~~

~~(7) After consultation with the governor, the state treasurer, the commission, the governing boards of the state institutions of higher education, the education committees of the house of representatives and the senate, and the joint budget committee of the general assembly, the board shall adopt and publish policies and procedures for implementing the education expense program. Such policies and procedures shall be effective and implemented no later than July 1, 1997.~~

(8) If, at any time, the authority determines that the ~~education~~ PREPAID expense program, or any aspect thereof, is not financially sound, the authority may discontinue permanently or for a period of time the prepaid expense program ~~or savings program~~ or that particular aspect of the program and the execution of additional advance payment ~~or savings~~ contracts. The ~~authority~~ STATE TREASURER shall continue to ~~administer and maintain the prepaid expense and savings trust funds~~ INVEST MONEYS IN THE PREPAID EXPENSE TRUST FUND BASED UPON THE ADVICE AND RECOMMENDATIONS OF THE AUTHORITY AND SHALL CONTINUE TO MAKE DISBURSEMENTS FROM THE PREPAID EXPENSE TRUST FUND IN CONNECTION WITH THE PREPAID EXPENSE PROGRAM BASED UPON THE DIRECTION OF THE AUTHORITY for the benefit of existing purchasers ~~depositors~~, and qualified beneficiaries except as otherwise authorized.

SECTION 9. 23-3.1-211, Colorado Revised Statutes, is amended to read:

23-3.1-211. Personal liability. Neither the members of the board, employees of the authority, nor any person executing the bonds or notes or advance payment ~~or savings~~ contracts shall be liable personally on bonds or notes or advance payment ~~or savings~~ contracts or be subject to any personal liability or accountability by reason of the issuance thereof or as a result of the ~~education~~ PREPAID expense program.

SECTION 10. 23-3.1-213, Colorado Revised Statutes, is amended to read:

23-3.1-213. Payment of bonds and advance payment contracts - limited liability of state. (1) Bonds and notes issued by the authority shall BE PAYABLE

SOLELY FROM THE FUNDS PROVIDED FOR IN THIS PART 2 AND SHALL NOT OTHERWISE constitute or become an indebtedness, a debt, or a liability of the state, nor shall the state OTHERWISE be liable on such bonds and notes, nor shall such bonds or notes constitute the giving, pledging, or loaning of the full faith and credit of the state. ~~but such bonds and notes shall be payable solely from the funds provided for in this part 2.~~ The issuance of bonds or notes under the provisions of this part 2 shall not obligate the state or empower the authority, directly, indirectly, or contingently, to levy or collect any form of taxes or assessments, to create any indebtedness payable out of taxes or assessments, or to make any appropriation for their payment, and such appropriation, levy, or collection is prohibited.

(2) ~~Nothing in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit to the payment of bonds or notes authorized pursuant to this part 2, but~~ Nothing in this part 2 shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of Colorado; and all bonds issued by the authority pursuant to the provisions of this part 2 are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or with any trust indenture executed as security for such bonds and are not OTHERWISE a debt or liability of the state of Colorado.

(3) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 2, the state shall not be liable in any event for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, obligation, or agreement of any kind whatsoever ~~which~~ THAT may be undertaken by the authority. No breach of any such pledge, obligation, or agreement shall impose any pecuniary liability upon the state, EXCEPT FROM FUNDS SPECIFICALLY PLEDGED BY THE STATE, or any charge upon its general credit or against its taxing power.

(4) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 2, advance payment contracts ~~savings contracts~~, and the benefits due thereunder shall BE PAYABLE SOLELY FROM THE MONEYS IN THE PREPAID EXPENSE TRUST FUND, AND SHALL NOT OTHERWISE constitute or become an indebtedness, a debt, or a liability of the state, nor shall the state OTHERWISE be liable on such advance payment ~~or savings~~ contracts, nor shall such advance payment ~~or savings~~ contracts constitute the giving, pledging, or loaning of the full faith and credit of the state. ~~but such advance payment and savings contracts and the benefits due thereunder shall be payable solely from the moneys in the prepaid expense and savings trust funds, respectively.~~ Advance payment contracts and the benefits due thereunder shall be payable by the authority solely from moneys in the prepaid expense trust fund and are not payable from or secured in any way by other moneys or accounts of the authority. ~~Savings contracts and the benefits due thereunder shall be payable by the authority solely from moneys in the savings trust fund and are not payable from or secured in any way by other moneys or accounts of the authority.~~

SECTION 11. 23-3.1-216, Colorado Revised Statutes, is amended to read:

23-3.1-216. Investment of funds. (1) ~~The authority may invest any funds~~ FUNDS OF THE AUTHORITY, INCLUDING THE MONEYS HELD IN THE COLORADO STUDENT OBLIGATION BOND AUTHORITY FUND CREATED IN SECTION 23-3.1-205.4, MAY BE INVESTED in securities meeting the investment requirements established in

part 6 of article 75 of title 24, C.R.S.; in certificates of deposit or time deposits constituting direct obligations of any bank or savings and loan association in Colorado ~~which~~ THAT may be made only in those certificates of deposit or time deposits in banks or savings and loan associations ~~which~~ THAT are insured by the federal deposit insurance corporation or federal savings and loan insurance corporation and may not exceed the maximum of such insurance unless such banks or savings and loan associations are eligible public depositories and such excess is secured by a pledge of eligible collateral as required by either article 10.5 or article 47 of title 11, C.R.S.; or in obligations of the student loan marketing association or any successor organization. Any such securities may be purchased at the offering or market price at the time of such purchase. ~~The authority may invest its Funds OF THE AUTHORITY MAY BE INVESTED~~ with such maturities as determined by the STATE TREASURER, BASED UPON THE ADVICE AND RECOMMENDATIONS OF THE authority, if such maturities are on a date or dates prior to the time when, in the judgment of the STATE TREASURER, BASED UPON THE ADVICE AND RECOMMENDATIONS OF THE authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time when any funds will be required for expenditure or be redeemable is final and conclusive.

(2) The board may direct a corporate trustee ~~which~~ THAT holds funds of the authority pursuant to a trust indenture between such trustee and the authority to invest or reinvest such funds in any investments, other than those specified in subsection (1) of this section, if the board determines by resolution, including but not limited to a bond resolution, that:

(a) Such investment meets the standard for investments established in section 15-1-304, C.R.S.;

(b) The income on such investment is at least comparable to income then available on the investments permitted in subsection (1) of this section; and

(c) Such investment will assist the authority in alleviating an insufficient access to student obligations from normal private market sources.

(3) In addition to the investments otherwise permitted in this part 2, the ~~authority~~ STATE TREASURER may invest moneys in the prepaid expense ~~and the savings trust funds~~ TRUST FUND in the following:

(a) State and municipal bonds;

(b) Corporate notes, bonds, and debentures, whether or not convertible, to the extent provided for in paragraph (d) of this subsection (3);

(c) Participation agreements with life insurance companies;

(d) Common or preferred stock; except that:

(I) No investment of moneys in the prepaid expense trust fund ~~or the savings trust fund~~ in common or preferred stock, or both, of any corporation shall be of an amount that exceeds five percent of the ~~then book value~~ MARKET VALUE OF INVESTABLE ASSETS of ~~such~~ THE trust fund EXCEPT THAT, SUCH AMOUNT MAY EXCEED FIVE

PERCENT, FOR A PERIOD NOT TO EXCEED SIXTY CONSECUTIVE DAYS;

(II) ~~Neither~~ The prepaid expense trust fund ~~nor the savings trust fund~~ shall NOT acquire more than five percent of the outstanding stock or bonds of any single corporation; and

(III) The aggregate amount of moneys of the prepaid expense trust fund ~~or savings trust fund~~ invested in common or preferred stock, or in corporate bonds, notes, or debentures ~~which~~ THAT are convertible into common or preferred stock, or in investment trust shares shall not exceed sixty percent of the ~~then book value~~ MARKET VALUE OF INVESTABLE ASSETS of ~~either fund or the aggregate of the funds~~ THE PREPAID EXPENSE TRUST FUND; EXCEPT THAT SUCH MARKET VALUE OF INVESTABLE ASSETS MAY EXCEED SIXTY PERCENT, BY NOT MORE THAN FIVE PERCENT, FOR A PERIOD NOT TO EXCEED SIXTY CONSECUTIVE DAYS; ~~and~~

(d.5) INVESTMENTS IN THE FORM OF MUTUAL FUNDS; AND

(e) Any guaranteed investment contract, guaranteed interest contract, annuity contract, or funding agreement if the board determines by resolution that:

(I) Such contract or agreement meets the standard for investments established in section 15-1-304, C.R.S.;

(II) The income on such contract or agreement is at least comparable to the income then available on the other investments permitted in this section; and

(III) Such contract or agreement will assist the authority in maintaining an actuarially sound trust fund.

SECTION 12. 23-3.1-217, Colorado Revised Statutes, is amended to read:

23-3.1-217. Proceeds as trust funds. EXCEPT AS OTHERWISE PROVIDED IN THIS PART 2, all moneys received pursuant to this part 2, whether as proceeds from the sale of bonds, notes, or other obligations or as revenues or receipts, including moneys received under advance payment contracts ~~and savings contracts~~, shall be deemed to be trust funds to be held and applied solely as provided in this part 2. Any officer, bank, or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this part 2, subject to such ~~regulations~~ POLICIES AND GUIDELINES as the authority and the resolution authorizing the bonds, notes, or other obligations of any issue or the trust ~~agreement~~ INDENTURE securing such obligations provides.

SECTION 13. 23-3.1-217.5, Colorado Revised Statutes, is amended to read:

23-3.1-217.5. Claims of creditors - exemption. Moneys credited to or expended from the prepaid expense trust fund ~~or the savings trust fund~~ by or on behalf of a purchaser ~~depositor~~, or qualified beneficiary of an advance payment contract ~~or a savings contract~~ made under this part 2, which contract has not been terminated, are exempt from all claims of creditors of the purchaser, ~~the depositor~~, the qualified beneficiary, or the authority.

SECTION 14. 23-3.1-221, Colorado Revised Statutes, is amended to read:

23-3.1-221. Account of activities - receipts for expenditures - report - audit.

The authority shall keep an accurate account of all its activities and of all its receipts and expenditures and shall report annually on such activities, receipts, and expenditures in the month of February to its members, to the governor, to the commission, and to the state auditor in a form prescribed by the controller. Also included in the report shall be any recommendations with reference to additional legislation, a financial analysis of the actuarial soundness of the prepaid expense trust fund, ~~and the savings trust fund,~~ and other action that may be necessary to carry out the purposes of the authority. The state auditor may investigate the affairs of the authority and may examine the properties and records of the authority, and the controller may prescribe methods of accounting and the rendering of periodical reports in relation to undertakings by the authority. ~~The authority~~ DEPARTMENT OF HIGHER EDUCATION shall adopt and prepare a budget FOR THE AUTHORITY for the next fiscal year. ~~in accordance with the bylaws of the authority.~~ BEGINNING JULY 1, 2000, the fiscal year of the authority shall begin on ~~October~~ JULY 1 and shall end on ~~September~~ JUNE 30. THE AUTHORITY SHALL NOT BE REQUIRED TO COMPLY WITH FISCAL RULES OF THE STATE OF COLORADO UNTIL JULY 1, 2000.

SECTION 15. Part 2 of article 3.1 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-3.1-226. Policies for promotion and disclosure of program information.

(1) THE AUTHORITY SHALL DESIGN A POLICY RELATED TO THE PROMOTION OF THE PREPAID EXPENSE PROGRAM AND A POLICY RELATED TO THE DISCLOSURE OF PROGRAM-RELATED INFORMATION TO PURCHASERS OR QUALIFIED BENEFICIARIES IN A MANNER CONSISTENT WITH THIS PART 2 AND CONSISTENT WITH THE REQUIREMENTS OF SECTION 529 OF THE INTERNAL REVENUE CODE IN ORDER TO REQUIRE THAT:

(a) APPROPRIATE PROMOTIONAL MATERIAL AND PROGRAM-RELATED INFORMATION DISCLOSE THE AVERAGE TUITION INCREASE IN STATE INSTITUTIONS OF HIGHER EDUCATION IN COLORADO, AS DEFINED IN SECTION 23-3.3-101 (4), OVER THE PREVIOUS FIVE YEARS;

(b) ANNUAL STATEMENTS TO PURCHASERS OR QUALIFIED BENEFICIARIES DISCLOSE THE NUMBER OF TUITION UNITS PAID FOR, THE PAYMENTS MADE FOR SUCH TUITION UNITS, AND THE CURRENT VALUE OF SUCH TUITION UNITS, AS WELL AS THE AVERAGE TUITION INCREASES IN STATE INSTITUTIONS OF HIGHER EDUCATION IN COLORADO, AS DEFINED IN SECTION 23-3.3-101 (4), OVER THE FIVE PREVIOUS YEARS;

(c) AN ANNUAL REPORT TO EACH PURCHASER OF AN ADVANCE PAYMENT CONTRACT SETTING FORTH THE VALUE AND RATE OF RETURN ON THE ADVANCE PAYMENT CONTRACT BASED ON A CALCULATION OF AVERAGE TUITION AND SETTING FORTH THE AMOUNT OF THE STABILIZATION RESERVE AND RETAINED EARNINGS IN THE PREPAID EXPENSE PROGRAM. THE REPORT SHALL BE PROVIDED AT LEAST ANNUALLY AND UPON REQUEST OF THE PURCHASER OF THE ADVANCE PAYMENT CONTRACT;

(d) PROMOTIONAL MATERIAL AND PROGRAM-RELATED INFORMATION DISCLOSE THAT NO MONEYS INVESTED IN THE PREPAID EXPENSE PROGRAM ARE INSURED BY THE STATE OF COLORADO AND THAT NEITHER THE PRINCIPAL DEPOSITED NOR THE

INVESTMENT RETURNED IS GUARANTEED BY THE STATE OF COLORADO. SUCH MATERIAL AND INFORMATION SHALL ALSO DISCLOSE THE EXISTENCE OF A STABILIZATION RESERVE TO BETTER SUPPORT ITS LIABILITY; AND

(e) ANY FEES PAID FROM MONEYS COLLECTED PURSUANT TO THIS PART 2 ARE DISCLOSED IN PROMOTIONAL MATERIAL AND PROGRAM-RELATED INFORMATION PROVIDED TO THE PUBLIC AND TO PURCHASERS OR QUALIFIED BENEFICIARIES, INCLUDING DISCLOSURE OF AMOUNTS ASSESSED FOR PAYMENTS OVER TIME.

SECTION 16. Part 3 of article 3.1 of title 23, Colorado Revised Statutes, is amended to read:

PART 3
COLLEGE SAVINGS PLAN

23-3.1-301. Legislative declaration. The general assembly hereby finds, determines, and declares that a choice of education opportunities will benefit the residents of the state of Colorado and that the establishment of a college savings program, to be administered by the Colorado student obligation bond authority ~~using a plan designed by the department of the treasury,~~ will enhance the availability of postsecondary educational opportunities for residents. It is the intent of the general assembly to achieve this purpose through a public-private partnership using selected financial institutions to serve as account holders and managers of individual college savings accounts.

23-3.1-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Account" means an individual trust account or savings account established pursuant to this part 3.

(2) "Account owner" means the person designated at the time an account is opened as having the right to withdraw moneys from the account before the account is disbursed to or for the benefit of the designated beneficiary.

(3) "Authority", PRIOR TO THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, means the Colorado student obligation bond authority ~~created pursuant to~~ EXISTING AS AN INDEPENDENT PUBLIC BODY POLITIC IN ACCORDANCE WITH section 23-3.1-203. ON AND AFTER THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, "AUTHORITY" MEANS THE COLORADO STUDENT OBLIGATION BOND AUTHORITY TRANSFERRED TO THE DEPARTMENT OF HIGHER EDUCATION AND EXISTING AS A DIVISION OF THAT DEPARTMENT PURSUANT TO SECTION 23-3.1-203.

(4) "Designated beneficiary" or "beneficiary" means, with respect to an account, the person designated at the time the account is opened, or the person who replaces a designated beneficiary, as the person whose education expenses are expected to be paid from the account.

(5) "Eligible education institution" has the same meaning as that term is defined in 26 U.S.C. sec. 135 (c) (3).

(5.5) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HIGHER EDUCATION.

(6) "Financial institution" means any state bank, state trust company, industrial bank, savings and loan association, credit union chartered by the state of Colorado, national bank, broker-dealer, mutual fund, insurance company, or other similar financial entity qualified to do business in the state of Colorado.

(7) "Internal revenue code" means the federal "Internal Revenue Code of 1986", as amended.

(8) "Manager" means a financial institution under contract with the authority to serve as administrator of the program and recipient of contributions on behalf of the program.

(9) "Member of the family" has the same meaning as that term is defined in 26 U.S.C. sec. 529 (e) (2).

(10) "Nonqualified withdrawal" means a withdrawal from an account other than a qualified withdrawal, a withdrawal made as the result of the death or disability of the designated beneficiary of an account, a withdrawal made as a result of the beneficiary's receipt of a scholarship, or a rollover or change of designated beneficiary.

(11) "Program" means the college savings program established pursuant to this part 3.

(12) "Qualified higher education expenses" has the same meaning as is provided for that term in 26 U.S.C. sec. 529 (e) (3).

(13) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, a withdrawal made on account of the death or disability of the designated beneficiary, or a withdrawal made on account of a scholarship, but only if the withdrawal is made in accordance with this part 3.

23-3.1-303. Department - purpose - powers - duties. (1) ~~In addition to any other powers and duties specifically granted by law, the department of the treasury shall:~~

~~(a) Design the program and the policies related thereto in a manner consistent with this part 3 and consistent with the requirements of section 529 of the internal revenue code; and~~

~~(b) Approve any plan for promoting the program developed by a manager, as provided in section 23-3.1-305 (6) (f).~~

23-3.1-304. Authority - purpose - powers - duties. (1) In addition to any other powers or duties specifically granted to the authority in this part 3, the authority shall:

(a) Develop and implement the program in a manner consistent with this part 3 ~~and~~

~~with the program design and policies as established by the department of the treasury through the adoption of rules, guidelines and procedures;~~

(b) Select the financial institution or institutions, and enter into a contract with said institution or institutions to serve as managers and to invest the contributions deposited into the accounts;

(c) Establish rules regarding withdrawal of funds, which rules shall include provisions that will enable the authority or the manager to determine if a withdrawal is a nonqualified withdrawal or a qualified withdrawal;

~~(d) Retain the professional services of accountants, auditors, consultants, and other experts if necessary in order to implement and develop the program;~~

(e) Seek rulings and other guidance from the United States department of the treasury, the internal revenue service, and the securities and exchange commission relating to the program as is necessary for proper implementation and development of the program;

(f) Make changes to the program required in order for account owners and beneficiaries and the program to obtain or maintain federal income tax benefits or treatment provided by section 529 of the internal revenue code and exemptions under federal securities laws;

(g) When establishing ~~rules~~, policies, guidelines, and procedures, interpret the provisions of this part 3 broadly in light of the purpose and objectives set forth in this part 3;

(h) Charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program in amounts not exceeding the cost of establishing and maintaining the program, SUBJECT TO THE APPROVAL OF THE EXECUTIVE DIRECTOR;

(i) Approve the application and review, for purposes of compliance with applicable laws and regulations, any informational materials utilized by the manager to be furnished to persons who desire to participate in the program established in this part 3;

~~(j) Promulgate rules~~ DEVELOP POLICIES relating to penalties associated with nonqualified withdrawals from accounts pursuant to section 23-3.1-306 (8);

(k) Adopt ~~rules~~ A POLICY to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiary;

(l) Require that every contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by this state and neither the principal deposited nor the investment return is guaranteed by the state;

(m) MAKE AND EXECUTE CONTRACTS WITH DEPOSITORS;

(n) DO ALL THINGS NECESSARY AND CONVENIENT TO CARRY OUT THE PURPOSES OF THIS PART 3.

(2) Notwithstanding the restrictions in section 23-3.1-216, the authority is hereby authorized to contract with one or more financial institutions pursuant to section 23-3.1-305 to act as managers for the investment of contributions related to this program in stocks, bonds, mutual funds, and other such investments as deemed appropriate by the authority. In so doing, the authority shall be bound by the fiduciary duty described in section 15-1-304, C.R.S., and shall assure that investments by the managers are made with judgment and care ~~which men~~ THAT PERSONS of prudence, discretion, and intelligence exercise in the management of the property of another, not in regard to speculation but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital. The funds contributed to the accounts established by account owners pursuant to this section are held in trust by the authority and the manager for the sole benefit of the account owner and beneficiary. These contributions are not subject to any limitations on the investment of public funds and are not subject to section 20 of article X of the state constitution, which limits fiscal year spending of state government and other districts.

23-3.1-305. Financial institutions - managers - purpose - selection - requirements - contracts. (1) The authority shall implement the program through the use of one or more financial institutions to act as managers. Under the program, potential account owners may establish accounts through the program at the financial institution.

(2) The authority shall solicit proposals from financial institutions to act as the recipients of contributions and managers.

(3) The authority shall select from among bidding financial institutions one or more financial institutions that demonstrate the most advantageous combination to account owners and beneficiaries, based on the following factors:

(a) Financial stability and integrity;

(b) The ability of the financial institution, directly or through a subcontract, to satisfy record-keeping and reporting requirements;

(c) The financial institution's plan for promoting the program and the investment that the financial institution is willing to make in order to promote the program;

(d) The historic ability of the investment instruments utilized by the financial institution to track the estimated costs of higher education as calculated by the United States department of education;

(e) The fees, if any, proposed to be charged to account owners for maintaining accounts;

(f) The minimum initial cash contribution and minimum contributions that the financial institution will require, and the willingness of the financial institution to accept contributions through payroll deduction plans or systematic deposit plans; and

(g) Any other benefits to the state or to its residents, included in the proposal, including an account opening fee payable to the authority by the account owner.

(4) The authority shall contract with one or more financial institutions, in accordance with subsection (5) of this section, to serve as managers and to invest the contributions to accounts. ON THE EFFECTIVE DATE OF SENATE BILL 00-164, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-SECOND GENERAL ASSEMBLY, PURSUANT TO SECTION 23-3.1-205.3, THE AUTHORITY SHALL SUCCEED TO ALL RIGHTS AND OBLIGATIONS UNDER ANY SUCH EXISTING CONTRACTS.

(5) The authority may select more than one financial institution for the program if the United States internal revenue service has provided guidance that giving a contributor a choice of two or more financial institutions will not cause the program to fail to qualify for favorable tax treatment under section 529 of the internal revenue code, and the authority concludes that the choice of two or more financial institutions is in the best interest of account owners and beneficiaries and will not interfere with the promotion of the program.

(5.5) THE AUTHORITY MAY SELECT A FINANCIAL INSTITUTION PURSUANT TO SUBSECTION (3) OF THIS SECTION WITHOUT REGARD TO THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S.

(6) A manager shall:

(a) Take all actions required to keep the program in compliance with the requirements of this part 3 and to assure that the program is treated as a qualified state tuition plan under section 529 of the internal revenue code and to assure that the program is exempt from registration under the federal securities law;

(b) Keep adequate and separate records of each account and provide the authority with the information necessary to prepare the reports required by section 529 of the internal revenue code or file these reports on behalf of the authority;

(c) Compile and total information contained in statements required to be prepared pursuant to section 23-3.1-306 (16) and (17) and provide these compilations to the authority;

(d) Provide representatives of the authority access to the books and records of the manager to the extent needed to determine compliance with the contract;

(e) Hold all accounts in trust for the sole benefit of the account owner and beneficiary on behalf of the program, acting in a fiduciary capacity and making investments with judgment, care, and prudence as described in section 15-1-304, C.R.S.; and

(f) Develop a plan to promote the program and, after approval of such plan by the ~~department of the treasury~~ AUTHORITY, promote the program in accordance with the plan.

(7) Any contract executed between the authority and a financial institution pursuant to this section shall be for a term of at least five years and may be

renewable.

(8) If a contract executed between the authority and a financial institution pursuant to this section is not renewed, all of the following conditions shall apply at the end of the term of the nonrenewed contract, so long as applying these conditions does not disqualify the program as a qualified state tuition plan under section 529 of the internal revenue code:

(a) The authority shall continue to maintain the program at the financial institution;

(b) Accounts previously established at the financial institution shall not be terminated, except as provided in paragraph (e) of this subsection (8) or as provided in subsection (9) of this section;

(c) Additional contributions may be made to the accounts;

(d) No new accounts may be placed with that financial institution; and

(e) If the authority determines that continuing the accounts at the financial institution is not in the best interest of the account owners, the accounts may be transferred to another financial institution under contract with the authority.

(9) The authority may terminate a contract with a financial institution at any time. If a contract is terminated pursuant to this subsection (9), the authority shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a manager and into investment instruments as similar to the original investments as possible pursuant to the guidelines established in section 23-3.1-306 (13). THE AUTHORITY MAY SELECT THE SUCCESSOR FINANCIAL INSTITUTION WITHOUT REGARD TO THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24, C.R.S.

23-3.1-306. Accounts - contributions - withdrawals - penalties - statements.

(1) The program shall be operated through the use of accounts. An account may be opened by any person who desires to save for the qualified higher education expenses of a potential beneficiary by satisfying each of the following requirements:

(a) Completing an application in the form prescribed by the financial institution and approved by the authority. Said application shall include the following information:

(I) The name, address, and social security number or employer identification number of any person that contributes to the account;

(II) The name, address, and social security number or employer identification number of the account owner;

(III) The name, address, social security number or employer identification number, and date of birth of the designated beneficiary;

(IV) A certification from the contributor that states that to the best of the contributor's knowledge, the account balance for the designated beneficiary in all

qualified state tuition programs, as defined in section 529 of the internal revenue code, does not exceed the greater of either a maximum college savings amount established by the authority or the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur; and

(V) Any other information that the authority may deem necessary.

(b) Making the minimum contribution required by the financial institution to open an account.

(2) Any person may make contributions to an account, consistent with the terms established by the authority, after the account is opened.

(3) Contributions to accounts shall be made in cash only.

(4) Account owners may withdraw all or part of the balance from an account upon giving sixty days' notice, or upon such shorter period as may be authorized by the authority pursuant to rules established by the authority, including any applicable fees and penalties.

(5) An account owner may change the designated beneficiary of an account to an individual who is a member of the family or former designated beneficiary in accordance with procedures established by the authority.

(6) At the direction of the account owner, all or a portion of an account may be transferred to another account, if the designated beneficiary of the transferee account is a member of the family of the designated beneficiary of the transferor account.

(7) Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate rules related to excess contributions or rules related to investment choice.

(8) In the case of any nonqualified withdrawal from an account, an amount that would constitute more than a de minimis penalty, as determined by the authority in accordance with section 529 of the internal revenue code, shall be withheld as a penalty from the amount withdrawn or from funds remaining in the account and paid to the authority for use in operating the program and for state student financial aid.

(9) If an account owner makes a nonqualified withdrawal and no penalty amount is withheld pursuant to subsection (8) of this section, or the amount withheld is less than the amount required to be withheld pursuant to subsection (8) of this section for nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty to the authority on or before April 15 of the following tax year.

(10) Each account shall be accounted for separately from all other accounts under the program.

(11) Separate records and accounting shall be maintained for each account for each designated beneficiary.

(12) As long as prohibited by federal law, no contributor to, account owner of, or designated beneficiary of any account may direct the investment of any contribution to an account or the earnings from the account.

(13) If the authority terminates the contract of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the authority shall select the financial institution to which the balances of the accounts are moved.

(14) Neither an account owner nor a designated beneficiary may use an interest in an account as a security for a loan. Any pledge of an interest in an account is of no force and effect.

(15) If there is any distribution from an account to any person or for the benefit of any person during the calendar year, the distribution shall be reported to the internal revenue service and to the account owner or the designated beneficiary to the extent required by federal law.

(16) The financial institution shall provide statements to each account owner at least once each year, within thirty-one days after the end of the calendar year. The statement shall identify the contributions made during the preceding reporting period, the total contributions made through the end of the reporting period, the value of the account as of the end of the reporting period, withdrawals made during the reporting period, and any other matters that the authority requires to be reported to the account owner.

(17) Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.

23-3.1-307. Limitations. (1) Nothing in this part 3 shall be construed to:

(a) Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(b) Guarantee that a designated beneficiary will be admitted to an education institution or be allowed to continue enrollment at or graduate from an education institution;

(c) Establish state residency for a beneficiary merely because of the designation as a beneficiary; or

(d) Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.

(2) Nothing in this part 3 shall establish any obligation of the state of Colorado or any agency or instrumentality of the state of Colorado to guarantee for the benefit of any owner, contributor to an account, or designated beneficiary any of the following:

(a) The return of any amounts contributed to an account;

(b) The rate of interest or other return on any account;

- (c) The payment of interest or other return on any account; or
- (d) Tuition rates or the cost of related education expenditures.

(3) Nothing in this part 3 shall be construed to indicate that the account is insured by the state of Colorado or that the principal deposited or investment return is guaranteed by the state of Colorado.

(3.5) NOTHING IN THIS PART 3 SHALL BE CONSTRUED TO CREATE AN INDEBTEDNESS, A DEBT, OR A LIABILITY OF THE STATE, NOR SHALL THE STATE BE LIABLE ON THE SAVINGS CONTRACTS, EXCEPT TO THE EXTENT OF THE AMOUNTS ON DEPOSIT IN THE ACCOUNTS, NOR SHALL A SAVINGS CONTRACT CONSTITUTE THE GIVING, PLEDGING, OR LOANING OF THE FULL FAITH AND CREDIT OF THE STATE.

(4) ~~Section 23-3.1-211, relating to personal liability, section 23-3.1-217.5, relating to claims of creditors, and section 23-3.1-225, relating to confidentiality of records, shall apply to this part 3.~~

23-3.1-307.1. Personal liability. NEITHER THE MEMBERS OF THE BOARD, EMPLOYEES OF THE AUTHORITY, NOR ANY PERSON EXECUTING SAVINGS CONTRACTS SHALL BE LIABLE PERSONALLY ON SAVINGS CONTRACTS OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY AS A RESULT OF THE SAVINGS PROGRAM.

23-3.1-307.3. Proceeds as trust funds. EXCEPT AS OTHERWISE PROVIDED IN THIS PART 3, ALL MONEYS RECEIVED PURSUANT TO THIS PART 3, INCLUDING MONEYS RECEIVED UNDER SAVINGS CONTRACTS, SHALL BE DEEMED TO BE TRUST FUNDS TO BE HELD AND APPLIED SOLELY AS PROVIDED IN THIS PART 3. ANY OFFICER, BANK, OR TRUST COMPANY WITH WHICH SUCH MONEYS ARE DEPOSITED SHALL ACT AS TRUSTEE OF SUCH MONEYS AND SHALL HOLD AND APPLY THE SAME FOR THE PURPOSES OF THIS PART 3, SUBJECT TO SUCH POLICIES AND GUIDELINES AS THE AUTHORITY AND THE RESOLUTION AUTHORIZING THE BONDS, NOTES, OR OTHER OBLIGATIONS OF ANY ISSUE OR THE TRUST AGREEMENT SECURING SUCH OBLIGATIONS PROVIDES.

23-3.1-307.4. Claims of creditors - exemption. MONEYS CREDITED TO OR EXPENDED FROM THE SAVINGS TRUST FUND BY OR ON BEHALF OF AN ACCOUNT OWNER, DEPOSITOR, OR DESIGNATED BENEFICIARY OF A SAVINGS CONTRACT MADE UNDER THIS PART 3, WHICH CONTRACT HAS NOT BEEN TERMINATED, ARE EXEMPT FROM ALL CLAIMS OF CREDITORS OF THE ACCOUNT OWNER, DEPOSITOR, DESIGNATED BENEFICIARY, OR THE AUTHORITY.

23-3.1-307.9. Policies for promotion and disclosure of program information.

(1) THE AUTHORITY SHALL DESIGN A POLICY RELATED TO THE PROMOTION OF THE COLLEGE SAVINGS PROGRAM AND A POLICY RELATED TO THE DISCLOSURE OF PROGRAM-RELATED INFORMATION TO ACCOUNT OWNERS, DEPOSITORS, AND DESIGNATED BENEFICIARIES IN A MANNER CONSISTENT WITH THIS PART 3 AND CONSISTENT WITH THE REQUIREMENTS OF SECTION 529 OF THE INTERNAL REVENUE CODE IN ORDER TO REQUIRE THAT:

(a) PROMOTIONAL MATERIAL AND PROGRAM-RELATED INFORMATION DISCLOSE THAT NO MONEYS INVESTED IN THE COLLEGE SAVINGS PROGRAM ARE INSURED BY THE STATE OF COLORADO AND THAT NEITHER THE PRINCIPAL DEPOSITED NOR THE

INVESTMENT RETURNED IS GUARANTEED BY THE STATE OF COLORADO; AND

(b) ANY FEES PAID FROM MONEYS COLLECTED PURSUANT TO THIS PART 3 ARE DISCLOSED IN PROMOTIONAL MATERIAL AND PROGRAM-RELATED INFORMATION PROVIDED TO THE PUBLIC AND TO ACCOUNT OWNERS, DEPOSITORS, AND DESIGNATED BENEFICIARIES.

23-3.1-308. Residency. Both resident and nonresident owners and designated beneficiaries shall be eligible to participate in and benefit from the ~~college savings~~ program.

23-3.1-309. Tax exemption. Notwithstanding any other law to the contrary, the amount of any distribution to a designated beneficiary, as defined in section 529 (e) (1) of the internal revenue code, from an account established under this part 3 shall be exempt from state income taxation to the extent that this income is used to pay qualified higher education expenses of the designated beneficiary.

SECTION 17. The introductory portion to 23-3.1-102 and 23-3.1-102 (3), Colorado Revised Statutes, are amended to read:

23-3.1-102. Definitions. As used in this article OR IN THE SPECIFIED PORTION OF THIS ARTICLE, unless the context otherwise requires:

(3) "Director", AS USED IN THIS PART 1, means the director of the division.

SECTION 18. 24-1-137, Colorado Revised Statutes, is amended to read:

24-1-137. Effect of decrease in the length of terms of office for certain state boards, commissions, authorities, and agencies. Persons who are holding office on June 15, 1987, and who were appointed to terms of office pursuant to sections 11-2-102, 12-4-103, 12-22-104, 12-32-103, 12-33-103, 12-36-103, 12-40-106, 12-60-102, 12-64-105, 22-80-104, ~~23-3.1-203~~, 23-9-103, 23-15-104, 23-40-104, 23-41-102, 23-50-102, 24-32-706, 24-42-102, 24-65-103, 25-25-104, 29-1-503, 29-4-704, 34-60-104, 35-41-101, 35-65-401, 35-75-104, 39-2-123, and 40-2-101, C.R.S., as said sections existed prior to June 15, 1987, shall continue to serve in such office, but such service shall be at the pleasure of the governor who may appoint a replacement to serve for the unexpired term of any member. However, if the governor has not appointed any such replacement on or before November 15, 1987, then the person who is holding such office on June 15, 1987, shall no longer be subject to replacement pursuant to this section but shall be subject to whatever removal provisions may otherwise apply for such office. Any such member for whom a replacement has been appointed shall continue to serve until his successor is duly qualified. Appointments to new terms of office made after June 15, 1987, shall be made for terms of four years as prescribed by law; except that such provision shall not apply to terms of office of persons appointed pursuant to section 23-9-103, C.R.S.

SECTION 19. 24-77-102 (15) (b) (VII), Colorado Revised Statutes, is amended to read:

24-77-102. Definitions. As used in this article, unless the context otherwise requires:

(15) (b) "Special purpose authority" includes, but is not limited to:

(VII) ~~The Colorado student obligation bond authority created pursuant to section 23-3.1-203, C.R.S.;~~

SECTION 20. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2000