

NOTE: The governor signed this measure on 6/6/2016.

An Act

SENATE BILL 16-204

BY SENATOR(S) Lambert, Grantham, Steadman, Crowder, Kefalas, Neville T., Tate, Woods;
also REPRESENTATIVE(S) Rankin, Hamner, Young, Arndt, Becker K., Brown, Fields, Ryden, Vigil.

CONCERNING THE HIGHER EDUCATION REVENUE BOND INTERCEPT PROGRAM.

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

SECTION 1. In Colorado Revised Statutes, **amend** 23-5-139 as follows:

23-5-139. Higher education revenue bond intercept program - definitions. (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"~~ AN INSTITUTION, shall make payment as provided in this section of principal and interest on INTERCEPT 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 INTERCEPT bonds as provided in this section. Any such resolution ~~shall~~ MUST be adopted prior to issuance or incurrence of the INTERCEPT bonds to which it applies.

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

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~~ TAKES effect ~~upon~~ ON the date the state treasurer receives the written notice and ~~shall continue~~ CONTINUES 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 INTERCEPT 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~~ IF an institution ISSUES A REVENUE BOND pursuant to this article on or after ~~April 26, 2013,~~ and to THE EFFECTIVE DATE OF THIS PARAGRAPH (b), AS AMENDED, OR ISSUES A refunding ~~bonds issued by an institution~~ BOND 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~~ THE EFFECTIVE DATE OF THIS PARAGRAPH (b), AS AMENDED, AND THE GOVERNING BOARD WISHES FOR SUCH REVENUE OR REFUNDING BOND TO BE AN INTERCEPT BOND, THEN:

(I) THE MAXIMUM TOTAL ANNUAL DEBT SERVICE PAYMENT OF THE NEW INTERCEPT BOND TO BE ISSUED PLUS THE DEBT SERVICE PAYMENT FOR ALL OTHER INTERCEPT BONDS THAT WERE ISSUED ON OR AFTER JUNE 4, 2008, BY THE SAME GOVERNING BOARD, MUST EQUAL SEVENTY-FIVE PERCENT OR LESS OF THE MOST RECENT FISCAL YEAR GENERAL FUND APPROPRIATION FOR STIPENDS AND FEE-FOR-SERVICE CONTRACTS THAT IS REAPPROPRIATED TO SUCH GOVERNING BOARD; AND

~~(II)~~ (II) EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (1), the governing ~~body of the institution has~~ BOARD MUST HAVE:

(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~~ GOVERNING BOARD'S net revenue available for annual debt service over ~~the~~ SUCH GOVERNING BOARD'S total amount of annual debt service ~~subject to this article and~~ PLUS the annual debt service to be issued ~~pursuant to this article~~ BY SUCH GOVERNING BOARD; and

~~(H)~~ (III) The pledged revenues for the NEW INTERCEPT BOND 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; AND

(IV) EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (1), THE GOVERNING BOARD HAS OBTAINED A PREAPPROVAL CERTIFICATE FROM THE STATE TREASURER AS DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (d) OF THIS SUBSECTION (1), AND OBTAINED APPROVAL FROM BOTH THE CAPITAL DEVELOPMENT COMMITTEE AND THE JOINT BUDGET COMMITTEE AS SPECIFIED IN SUBSECTION (1.5) OF THIS SECTION.

~~(c) (I) (A) The state treasurer may exempt an institution from the requirements of subparagraph (f)~~ IF THE STATE TREASURER DETERMINES THAT A GOVERNING BOARD DOES NOT MEET THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (II) of paragraph (b) of this subsection (1), ~~if the STATE TREASURER CONFIRMS THAT THE revenue bonds to be issued are refunding bonds that result in cost savings to the institution~~ GOVERNING BOARD BASED ON A CASH FLOW ANALYSIS, THE REFUNDING BONDS WILL REFUND INTERCEPT BONDS, AND THE REFUNDING BONDS WILL NOT EXTEND THE NUMBER OF YEARS OF REPAYMENT, THEN THE REQUIREMENTS SET FORTH IN SUBPARAGRAPHS (II) AND (IV) OF PARAGRAPH (b) OF THIS SUBSECTION (1)

SHALL NOT APPLY. NO LATER THAN FIFTEEN DAYS AFTER RECEIVING A REQUEST IN WRITING FROM A GOVERNING BOARD TO USE THE INTERCEPT PROGRAM, THE STATE TREASURER SHALL NOTIFY THE CAPITAL DEVELOPMENT COMMITTEE, THE JOINT BUDGET COMMITTEE, THE COLORADO COMMISSION ON HIGHER EDUCATION, AND THE OFFICE OF STATE PLANNING AND BUDGETING THAT THE GOVERNING BOARD HAS MET THE REQUIREMENTS OF THIS SUB-SUBPARAGRAPH (A). THE STATE TREASURER MAY MAKE RECOMMENDATIONS TO THE GOVERNING BOARD REGARDING THE STRUCTURE OF THE REFUNDING.

(B) IF THE STATE TREASURER DETERMINES THAT A GOVERNING BOARD DOES NOT MEET THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1), THE STATE TREASURER CONFIRMS THAT THE REVENUE BONDS TO BE ISSUED ARE REFUNDING BONDS THAT RESULT IN COST SAVINGS TO THE GOVERNING BOARD BASED ON A CASH FLOW ANALYSIS, THE REFUNDING BONDS WILL EITHER REFUND REVENUE BONDS THAT ARE NOT INTERCEPT BONDS, OR THE REFUNDING BONDS WILL EXTEND THE NUMBER OF YEARS OF REPAYMENT, THEN THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1) SHALL NOT APPLY. NO LATER THAN FIFTEEN DAYS AFTER RECEIVING A REQUEST IN WRITING FROM A GOVERNING BOARD TO USE THE INTERCEPT PROGRAM, THE STATE TREASURER SHALL NOTIFY THE CAPITAL DEVELOPMENT COMMITTEE, THE JOINT BUDGET COMMITTEE, THE COLORADO COMMISSION ON HIGHER EDUCATION, THE OFFICE OF STATE PLANNING AND BUDGETING, AND THE GOVERNING BOARD WHETHER OR NOT HE OR SHE RECOMMENDS THE REQUESTED USE OF THE INTERCEPT PROGRAM. THE GOVERNING BOARD MUST SUBSEQUENTLY SEEK APPROVAL FROM THE CAPITAL DEVELOPMENT COMMITTEE AND THE JOINT BUDGET COMMITTEE AS SET FORTH IN SUBSECTION (1.5) OF THIS SECTION. THE NOTIFICATION ISSUED BY THE STATE TREASURER MAY INCLUDE THE STATE TREASURER'S RECOMMENDATIONS REGARDING THE STRUCTURE OF THE REFUNDING.

(II) IF THE STATE TREASURER DETERMINES THAT A GOVERNING BOARD MEETS THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1), THE STATE TREASURER CONFIRMS THAT THE REVENUE BONDS TO BE ISSUED ARE REFUNDING BONDS THAT RESULT IN COST SAVINGS TO THE GOVERNING BOARD BASED ON A CASH FLOW ANALYSIS BY THE STATE TREASURER, THE REFUNDING BONDS WILL REFUND INTERCEPT BONDS, AND THE REFUNDING BONDS WILL NOT EXTEND THE NUMBER OF YEARS OF REPAYMENT, THEN THE REQUIREMENTS SET

FORTH IN SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF THIS SUBSECTION (1) SHALL NOT APPLY. NO LATER THAN FIFTEEN DAYS AFTER RECEIVING A REQUEST IN WRITING FROM A GOVERNING BOARD TO USE THE INTERCEPT PROGRAM, THE STATE TREASURER SHALL NOTIFY THE CAPITAL DEVELOPMENT COMMITTEE, THE JOINT BUDGET COMMITTEE, THE COLORADO COMMISSION ON HIGHER EDUCATION, AND THE OFFICE OF STATE PLANNING AND BUDGETING THAT THE GOVERNING BOARD HAS MET THE REQUIREMENTS OF THIS SUBPARAGRAPH (II). THE STATE TREASURER MAY MAKE RECOMMENDATIONS TO THE GOVERNING BOARD REGARDING THE STRUCTURE OF THE REFUNDING.

(III) THE STATE TREASURER SHALL DEVELOP AND ISSUE GUIDELINES THAT DETAIL HOW THE STATE TREASURER WILL DETERMINE WHETHER A REFUNDING BOND RESULTS IN COST SAVINGS TO THE GOVERNING BOARD BASED ON A CASH FLOW ANALYSIS. THE STATE TREASURER MAY CONSULT WITH FINANCIAL ADVISORS IN ORDER TO DETERMINE WHETHER A REFUNDING BOND RESULTS IN COST SAVINGS TO THE GOVERNING BOARD ON A CASH FLOW ANALYSIS.

(d) (I) NO LATER THAN SEPTEMBER 1, 2016, AND EACH SEPTEMBER 1 THEREAFTER, THE STATE TREASURER SHALL PROVIDE THE CAPITAL DEVELOPMENT COMMITTEE, THE JOINT BUDGET COMMITTEE, THE COLORADO COMMISSION ON HIGHER EDUCATION, AND THE OFFICE OF STATE PLANNING AND BUDGETING WITH A REPORT THAT INCLUDES:

(A) THE CREDIT RATING DESCRIBED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1) OF EACH GOVERNING BOARD THAT HAS ISSUED INTERCEPT BONDS;

(B) THE DEBT SERVICE COVERAGE RATIO DESCRIBED IN SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1) OF EACH GOVERNING BOARD THAT HAS ISSUED INTERCEPT BONDS;

(C) THE TOTAL AMOUNT OF ALL INTERCEPT BONDS ISSUED BY GOVERNING BOARDS, INCLUDING THE ANTICIPATED PAYMENT SCHEDULE FOR SUCH INTERCEPT BONDS; AND

(D) THE TOTAL AMOUNT OF ALL REVENUE BONDS ISSUED BY GOVERNING BOARDS UNDER SECTION 23-5-101.7 (2), INCLUDING THE

ANTICIPATED PAYMENT SCHEDULE FOR ALL SUCH REVENUE BONDS.

(II) THE REPORT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) IS THE BASIS FOR THE ANNUAL PREAPPROVAL CERTIFICATE THAT THE STATE TREASURER SHALL ISSUE TO EACH GOVERNING BOARD THAT MEETS THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1). IN THE EVENT A GOVERNING BOARD DESIRES TO ISSUE INTERCEPT BONDS BETWEEN THE EFFECTIVE DATE OF THIS SUBPARAGRAPH (II) AND SEPTEMBER 1, 2016, THE CAPITAL DEVELOPMENT COMMITTEE MAY REQUEST THE STATE TREASURER TO ISSUE AN EARLY PREAPPROVAL CERTIFICATE FOR SUCH GOVERNING BOARD WHEN A PREAPPROVAL CERTIFICATE HAS NOT YET BEEN ISSUED. THE PREAPPROVAL CERTIFICATE MUST INCLUDE THE TOTAL AMOUNT OF INTERCEPT BONDS THAT THE GOVERNING BOARD MAY ISSUE FOR THE PERIOD THAT THE PREAPPROVAL CERTIFICATE COVERS. THE TOTAL AMOUNT OF INTERCEPT BONDS THAT A GOVERNING BOARD MAY ISSUE MUST BE CALCULATED BASED ON THE LESSER OF THE FOLLOWING, AS OF THE DATE OF ISSUANCE OF THE PREAPPROVAL CERTIFICATE:

(A) THE DIFFERENCE BETWEEN SEVENTY-FIVE PERCENT OF THE MOST RECENT FISCAL YEAR'S GENERAL FUND APPROPRIATIONS FOR STIPENDS AND FEE-FOR-SERVICE CONTRACTS THAT ARE REAPPROPRIATED TO SUCH GOVERNING BOARD AND THE TOTAL ANNUAL DEBT SERVICE PAYMENTS FOR INTERCEPT BONDS OF SUCH GOVERNING BOARD; OR

(B) THE TOTAL AMOUNT OF ADDITIONAL REVENUE BONDS A GOVERNING BOARD COULD ISSUE WHILE MAINTAINING THE REQUIREMENTS SET FORTH IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (1).

(III) THE PREAPPROVAL CERTIFICATE DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (d) MAY BE AMENDED IF REQUESTED BY THE CAPITAL DEVELOPMENT COMMITTEE AS SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (1.5) OF THIS SECTION.

(IV) THE PREAPPROVAL CERTIFICATE DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (d) MAY INCLUDE THE STATE TREASURER'S RECOMMENDATIONS REGARDING THE STRUCTURE OF ANY INTERCEPT BONDS TO BE ISSUED.

(1.5) (a) (I) A GOVERNING BOARD DESIRING TO ISSUE INTERCEPT BONDS SHALL PRESENT THE STATE TREASURER'S PREAPPROVAL CERTIFICATE, DESCRIBED IN PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION, TO THE CAPITAL DEVELOPMENT COMMITTEE AND REQUEST APPROVAL FROM THE CAPITAL DEVELOPMENT COMMITTEE. THE REQUEST MUST INCLUDE:

(A) A DESCRIPTION OF THE PROJECT OR PROJECTS THAT THE GOVERNING BOARD SEEKS TO FINANCE THROUGH THE ISSUANCE OF INTERCEPT BONDS;

(B) THE MAXIMUM AMOUNT OF INTERCEPT BONDS THE GOVERNING BOARD SEEKS TO ISSUE FOR THE PROJECT OR PROJECTS;

(C) THE ANTICIPATED TERMS OF THE INTERCEPT BONDS INCLUDING THE MAXIMUM ANTICIPATED ANNUAL DEBT SERVICE PAYMENT; AND

(D) IF AVAILABLE, A COPY OF THE GOVERNING BOARD'S RESOLUTION THAT AUTHORIZES THE ISSUANCE OF REVENUE BONDS.

(II) IF THERE ARE ACTUAL OR ANTICIPATED CHANGES TO THE FINANCIAL POSITION AND CREDIT RATING OF THE GOVERNING BOARD THAT MAY AFFECT THE GOVERNING BOARD'S COMPLIANCE WITH PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION SINCE THE PREAPPROVAL CERTIFICATE WAS ISSUED BY THE STATE TREASURER, THE GOVERNING BOARD SHALL PROVIDE THE CAPITAL DEVELOPMENT COMMITTEE WITH DOCUMENTATION REGARDING SUCH CHANGES. THE CAPITAL DEVELOPMENT COMMITTEE MAY REQUEST THE STATE TREASURER TO PREPARE AN AMENDED PREAPPROVAL CERTIFICATE ON THE BASIS OF THE ADDITIONAL DOCUMENTATION.

(b) NO LATER THAN THIRTY DAYS AFTER THE REQUEST FOR APPROVAL DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1.5) DURING A REGULAR LEGISLATIVE SESSION OF THE GENERAL ASSEMBLY, OR NO LATER THAN FORTY-FIVE DAYS AFTER THE REQUEST FOR APPROVAL DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1.5) DURING ANY PERIOD THAT THE GENERAL ASSEMBLY IS NOT IN REGULAR LEGISLATIVE SESSION, THE CAPITAL DEVELOPMENT COMMITTEE SHALL REVIEW THE REQUEST FOR APPROVAL AND FORWARD A LETTER TO THE JOINT BUDGET COMMITTEE SETTING FORTH ITS APPROVAL OR DISAPPROVAL FOR SUCH GOVERNING BOARD TO USE THE INTERCEPT PROGRAM AND, IF APPROVED, ANY RECOMMENDATIONS THE

CAPITAL DEVELOPMENT COMMITTEE MAY HAVE REGARDING THE MAXIMUM AMOUNT OF INTERCEPT BONDS THAT MAY BE ISSUED BY SUCH GOVERNING BOARD.

(c) NO LATER THAN FORTY-FIVE DAYS AFTER RECEIPT OF THE LETTER FROM THE CAPITAL DEVELOPMENT COMMITTEE DURING THE PERIOD OF OCTOBER 10 TO APRIL 10 OF ANY CALENDAR YEAR, OR NO LATER THAN NINETY-FIVE DAYS AFTER RECEIPT OF THE LETTER FROM THE CAPITAL DEVELOPMENT COMMITTEE DURING THE PERIOD OF APRIL 11 TO OCTOBER 9 OF ANY CALENDAR YEAR, THE JOINT BUDGET COMMITTEE SHALL REVIEW THE PROJECT OR PROJECTS AND THE GOVERNING BOARD'S REQUEST TO FINANCE THE PROJECT OR PROJECTS THROUGH THE ISSUANCE OF INTERCEPT BONDS. THE JOINT BUDGET COMMITTEE SHALL FORWARD A LETTER TO THE STATE TREASURER, THE OFFICE OF STATE PLANNING AND BUDGETING, THE COLORADO COMMISSION ON HIGHER EDUCATION, AND THE GOVERNING BOARD SETTING FORTH THE COMMITTEE'S APPROVAL OR DISAPPROVAL FOR SUCH GOVERNING BOARD TO USE THE INTERCEPT PROGRAM AND THE MAXIMUM AMOUNT OF INTERCEPT BONDS THAT MAY BE ISSUED BY SUCH GOVERNING BOARD.

(d) EXCEPT AS PROVIDED IN PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, NO GOVERNING BOARD MAY ISSUE INTERCEPT BONDS UNTIL THE JOINT BUDGET COMMITTEE ISSUES THE APPROVAL LETTER DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (1.5).

(e) THE CAPITAL DEVELOPMENT COMMITTEE SHALL DEVELOP INSTRUCTIONS ON THE FORMAT FOR REQUESTS FOR APPROVAL TO ISSUE INTERCEPT BONDS. SUCH INSTRUCTIONS MUST BE DEVELOPED IN CONSULTATION WITH THE JOINT BUDGET COMMITTEE, THE COLORADO COMMISSION ON HIGHER EDUCATION, AND THE OFFICE OF STATE PLANNING AND BUDGETING. IF A REQUEST TO ISSUE INTERCEPT BONDS DOES NOT RELATE TO A NEW CAPITAL CONSTRUCTION, CAPITAL RENEWAL, OR CONTROLLED MAINTENANCE PROJECT, THE GUIDELINES MAY ALLOW THE GOVERNING BOARD TO SUBMIT THE REQUEST DIRECTLY TO THE CAPITAL DEVELOPMENT COMMITTEE.

(f) THE CAPITAL DEVELOPMENT COMMITTEE MAY REQUEST INPUT FROM THE STATE TREASURER ON ALL REQUESTS FROM A GOVERNING BOARD TO EXPAND OR RESTRUCTURE INTERCEPT BONDS.

(2) Whenever the paying agent has not received payment of principal of or interest on INTERCEPT 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~~ INTERCEPT BONDS 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 OR OTHER 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~~ INTERCEPT BONDS. 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) (a) Any ~~institution~~ GOVERNING BOARD with ~~a bond~~ AN INTERCEPT BOND issue for which this section applies shall file with the state treasurer WITHIN THIRTY DAYS OF ITS PUBLIC RELEASE a copy of the resolution that authorizes the issuance of INTERCEPT bonds; a copy of the official statement or other offering document for the INTERCEPT bonds; the agreement, if any, with the paying agent for the INTERCEPT bonds; and the name, address, and telephone number of the paying agent. A COPY OF THE OFFICIAL STATEMENT OR OTHER OFFERING DOCUMENT FOR THE INTERCEPT BONDS MUST ALSO BE SUBMITTED WITHIN THIRTY DAYS OF ITS PUBLIC RELEASE TO THE OFFICE OF STATE PLANNING AND BUDGETING, THE COLORADO COMMISSION ON HIGHER EDUCATION, THE CAPITAL DEVELOPMENT COMMITTEE, AND THE JOINT BUDGET COMMITTEE.

(b) ON THE DAY A PRELIMINARY OFFICIAL STATEMENT IS PUBLICLY RELEASED FOR AN INTERCEPT BOND TO BE ISSUED, THE GOVERNING BOARD SHALL NOTIFY THE STATE TREASURER, THE OFFICE OF STATE PLANNING AND BUDGETING, THE COLORADO COMMISSION ON HIGHER EDUCATION, THE CAPITAL DEVELOPMENT COMMITTEE, AND THE JOINT BUDGET COMMITTEE BY PROVIDING AN ELECTRONIC LINK TO OR AN ELECTRONIC COPY OF THE PRELIMINARY OFFICIAL STATEMENT.

(c) The failure of any ~~institution~~ GOVERNING BOARD to file ~~such~~ ANY information ~~shall~~ REQUIRED IN THIS SUBSECTION (5) DOES not affect the ~~obligation of the state treasurer to withhold the state's fee-for-service contract payments to the institution~~ STATE TREASURER'S OBLIGATIONS SET FORTH IN THIS SECTION.

(6) As provided in section 11 of article II of the state constitution, the state hereby covenants with the purchasers and owners of INTERCEPT 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 INTERCEPT 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 INTERCEPT 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.

(8) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CASH FLOW ANALYSIS" MEANS A COMPARISON MADE BY THE STATE TREASURER OF A GOVERNING BOARD'S ANNUAL DEBT SERVICE CURRENTLY BEING PAID ON THE REVENUE BONDS OR INTERCEPT BONDS TO BE REFUNDED VERSUS ANNUAL DEBT SERVICE TO BE PAID ON THE INTERCEPT BONDS BEING ISSUED TO EFFECTUATE THE REFUNDING AND THE RESULTING DEBT SERVICE SAVINGS OR DISSAVINGS THAT ARE GENERATED. THE CASH FLOW ANALYSIS MUST CONSIDER THE UNIVERSE OF REFUNDING CANDIDATES AND REFUNDING BOND STATISTICS INCLUDING THE TRUE INTEREST COST, AVERAGE LIFE OF REFUNDED AND REFUNDING BONDS, AVERAGE ANNUAL DEBT SERVICE, GROSS DEBT SERVICE, AND THE EXPECTED PRESENT VALUE SAVINGS ON THE REFUNDING.

(b) "GOVERNING BOARD" MEANS THE GOVERNING BODY OF A STATE INSTITUTION OF HIGHER EDUCATION.

(c) "INTERCEPT BONDS" MEANS REVENUE BONDS, REFUNDING BONDS, OR OTHER OBLIGATIONS ISSUED PURSUANT TO THIS SECTION.

(d) "INTERCEPT PROGRAM" MEANS THE PROGRAM SET FORTH IN THIS SECTION.

(e) "STATE INSTITUTION OF HIGHER EDUCATION" OR "INSTITUTION" HAS THE SAME MEANING AS SET FORTH IN SECTION 23-18-102 (10).

SECTION 2. In Colorado Revised Statutes, 23-1-106, **amend** (1), (3), (5) (a), (6), (7) (a), (7) (c) (I), (9), (10.2) (a) (I), and (10.5); and **repeal** (10) and (11) (a) (II) as follows:

23-1-106. Duties and powers of the commission with respect to

capital construction and long-range planning - legislative declaration - definitions. (1) Except as permitted by ~~subsections (9) and (10)~~ SUBSECTION (9) of this section, it is declared to be the policy of the general assembly not to authorize any activity requiring capital construction or capital renewal for state institutions of higher education unless approved by the commission.

(3) The commission shall review and approve facility master plans for all state institutions of higher education on land owned or controlled by the state or an institution and capital construction or capital renewal program plans for projects other than those projects described in subsection (9) ~~or (10)~~ of this section. The commission shall forward the approved facility master plans to the office of the state architect. Except for those projects described in subsection (9) ~~or (10)~~ of this section, no capital construction or capital renewal shall commence except in accordance with an approved facility master plan and program plan.

(5) (a) The commission shall approve plans for any capital construction or capital renewal project at any state institution of higher education regardless of the source of funds; except that the commission need not approve plans for any capital construction or capital renewal project at a local district college or area vocational school or for any capital construction or capital renewal project described in subsection (9) ~~or (10)~~ of this section.

(6) (a) The commission shall request annually from each governing board of each state institution of higher education a five-year projection of capital construction or capital renewal projects to be constructed but not including those projects described in subsection (9) ~~or (10)~~ of this section. The projection must include the estimated cost, the method of funding, a schedule for project completion, and the governing board-approved priority for each project. The commission shall determine whether a proposed project is consistent with the role and mission and master planning of the institution and conforms to standards recommended by the commission.

(b) The commission shall request annually from the governing board of each state institution of higher education a two-year projection of capital construction projects to be undertaken pursuant to subsection (9) ~~or (10)~~ of this section and estimated to require total project expenditures exceeding two million dollars. The projection must include the estimated

cost, the method of funding, and a schedule for project completion for each project. A state institution of higher education shall amend the projection prior to commencing a project that is not included in the institution's most recent projection.

(7) (a) The commission annually shall prepare a unified, five-year capital improvements report of projects to be constructed, but not including those capital construction or capital renewal projects to be undertaken pursuant to subsection (9) ~~or (10)~~ of this section, coordinated with education plans. The commission shall transmit the report to the office of state planning and budgeting, the office of the state architect, the capital development committee, and the joint budget committee, consistent with the executive budget timetable, together with a recommended priority of funding of capital construction or capital renewal projects for the system of public higher education. The commission shall annually transmit the recommended priority of funding of capital construction or capital renewal projects to the capital development committee no later than November 1 of each year.

(c) (I) The commission annually shall prepare a unified, two-year report for capital construction or capital renewal projects described in subsection (9) ~~or (10)~~ of this section and estimated to require total project expenditures exceeding two million dollars, coordinated with education plans. The commission shall transmit the report to the office of state planning and budgeting, the governor, the capital development committee, and the joint budget committee, consistent with the executive budget timetable.

(9) (a) Except as provided in paragraph (d) of this subsection (9), a capital construction or capital renewal project for an auxiliary facility initiated by the governing board of a state institution of higher education that is contained in the most recent two-year projection approved pursuant to subparagraph (II) of paragraph (c) of subsection (7) of this section, as the projection may be amended from time to time, and that is to be acquired or constructed and operated and maintained solely from cash funds held by the institution is not subject to additional review or approval by the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee; EXCEPT THAT, IF THE CAPITAL CONSTRUCTION OR CAPITAL RENEWAL PROJECT FOR AN AUXILIARY FACILITY IS TO BE ACQUIRED OR CONSTRUCTED IN WHOLE OR IN

PART USING MONEYS SUBJECT TO THE HIGHER EDUCATION REVENUE BOND INTERCEPT PROGRAM ESTABLISHED PURSUANT TO SECTION 23-5-139, THEN THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION MUST OBTAIN APPROVAL FROM THE GENERAL ASSEMBLY AS SPECIFIED IN THAT SECTION.

(b) Except as provided in paragraph (d) of this subsection (9), a capital construction or capital renewal project for an academic facility initiated by the governing board of a state institution of higher education that is contained in the most recent two-year projection approved pursuant to subparagraph (II) of paragraph (c) of subsection (7) of this section, as the projection may be amended from time to time, and that is to be acquired or constructed solely from cash funds held by the institution and operated and maintained from such funds or from state moneys appropriated for such purpose, or both, is not subject to additional review or approval by the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee; EXCEPT THAT, IF THE CAPITAL CONSTRUCTION OR CAPITAL RENEWAL PROJECT FOR AN ACADEMIC FACILITY IS TO BE ACQUIRED OR CONSTRUCTED IN WHOLE OR IN PART USING MONEYS SUBJECT TO THE HIGHER EDUCATION REVENUE BOND INTERCEPT PROGRAM ESTABLISHED PURSUANT TO SECTION 23-5-139, THEN THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION MUST OBTAIN APPROVAL FROM THE GENERAL ASSEMBLY AS SPECIFIED IN THAT SECTION. Any capital construction or capital renewal project subject to this paragraph (b) must comply with the high performance standard certification program established pursuant to section 24-30-1305.5, C.R.S.

(c) Each governing board shall ensure, consistent with its responsibilities as set forth in section 5 (2) of article VIII of the state constitution, that a capital construction or capital renewal project initiated pursuant to this subsection (9) is in accordance with its institution's mission, be of a size and scope to provide for the defined program needs, and be designed in accordance with all applicable building codes and accessibility standards.

~~(d) (I) The provisions of this subsection (9) do not apply to a capital construction or capital renewal project that is to be acquired or constructed in whole or in part using moneys subject to the higher education revenue bond intercept program established pursuant to section 23-5-139.~~

(II) Any plan for any such capital construction or capital renewal project that is estimated to require total expenditures of two million dollars or less is not subject to review or approval by the commission.

(e) A capital construction or acquisition project approved and appropriated prior to January 1, 2010, may be contained in the most recent unified two-year capital improvements project projection approved pursuant to subparagraph (II) of paragraph (c) of subsection (7) of this section. The projection may be amended from time to time and is not subject to additional review or approval by the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee.

~~(10) (a) (I) The commission shall review and approve any plan for a capital construction or capital renewal project for an auxiliary facility that is estimated to require total expenditures exceeding two million dollars and that is to be acquired or constructed and operated and maintained solely from cash funds held by the state institution of higher education that, in whole or in part, are subject to the higher education revenue bond intercept program established pursuant to section 23-5-139.~~

~~(H) The commission shall review and approve any plan for a capital construction or capital renewal project for an academic facility that is estimated to require total expenditures exceeding two million dollars, that is to be acquired or constructed solely from cash funds held by the state institution of higher education that, in whole or in part, are subject to the higher education revenue bond intercept program established pursuant to section 23-5-139, and that is operated and maintained from such cash funds or from state moneys appropriated for such purpose, or both. Any capital construction or capital renewal project subject to this subparagraph (H) must comply with the high performance standard certification program established pursuant to section 24-30-1305.5, C.R.S.~~

~~(HH) Any plan for any such capital construction or capital renewal project that is estimated to require total expenditures of two million dollars or less is not subject to review or approval by the commission.~~

~~(b) Upon approval of a plan for a capital construction or capital renewal project pursuant to paragraph (a) of this subsection (10), the commission shall submit the plan to the capital development committee.~~

~~The capital development committee shall make a recommendation regarding the project to the joint budget committee. Following the receipt of the recommendation, the joint budget committee shall refer its recommendations regarding the project, with written comments, to the commission.~~

~~(c) A capital construction project approved and appropriated prior to January 1, 2010, may be contained in the most recent two-year projection approved pursuant to subparagraph (H) of paragraph (c) of subsection (7) of this section, and the projection may be amended from time to time.~~

(10.2) (a) (I) Notwithstanding any law to the contrary, all academic facilities acquired or constructed, or an auxiliary facility repurposed for use as an academic facility, solely from cash funds held by the state institution of higher education and operated and maintained from such cash funds or from state moneys appropriated for such purpose, or both, including, but not limited to, those facilities described in paragraph (b) of subsection (9) of this section, ~~and subparagraph (H) of paragraph (a) of subsection (10) of this section~~, that did not previously qualify for state controlled maintenance funding will qualify for state controlled maintenance funding, subject to funding approval by the capital development committee and the eligibility guidelines described in section 24-30-1303.9, C.R.S.

(10.5) (a) For any project subject to subsection (9) ~~or (10)~~ of this section, if, after commencement of construction, the governing board of the state institution of higher education receives an additional gift, grant, or donation for the project, the governing board may amend the project without the approval of the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee so long as the governing board notifies the commission, the office of state planning and budgeting, the capital development committee, and the joint budget committee in writing, explaining how the project has been amended and verifying the receipt of the additional gift, grant, or donation.

(b) For any project subject to subsection (9) ~~or (10)~~ of this section, the governing board may enhance the project in an amount not to exceed fifteen percent of the original estimate of the cost of the project without the approval of the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee so long as

the governing board notifies the commission, the office of state planning and budgeting, the capital development committee, and the joint budget committee in writing, explaining how the project has been enhanced and the source of the moneys for the enhancement.

(c) For any project subject to subsection (9) ~~or (10)~~ of this section, the governing board of the state institution of higher education implementing the project is not required to submit for the project quarterly expenditure reports as described in section 24-30-204 (2), C.R.S. The governing board shall submit for the project annual expenditure reports as required in section 24-30-204 (1), C.R.S.

(11)(a) Each state institution of higher education shall submit to the commission on or before September 1 of each year a list and description of each project for which an expenditure was made during the immediately preceding fiscal year that:

(II) ~~Was approved pursuant to subsection (10) of this section;~~

SECTION 3. In Colorado Revised Statutes, 24-30-204, **amend** (2) (b) as follows:

24-30-204. Fiscal year. (2) (b) Notwithstanding the provisions of paragraph (a) of this subsection (2), a governing board that implements a capital construction or acquisition project as described in section 23-1-106 (9), ~~or (10)~~, C.R.S., is not required to submit for the project quarterly reports as described in paragraph (a) of this subsection (2).

SECTION 4. In Colorado Revised Statutes, 24-30-1303, **amend** (5) (c) as follows:

24-30-1303. Office of the state architect - responsibilities. (5) (c) If the state architect determines that the governing board of a state institution of higher education has adopted procedures that adequately meet the safeguards set forth in the requirements of part 14 of this article and article 92 of this title, the state architect may exempt the institution from any of the procedural requirements of part 14 of this article and article 92 of this title in regard to a capital construction project to be constructed pursuant to the provisions of section 23-1-106 (9), ~~or (10)~~, C.R.S.; except that the selection of any contractor to perform professional services as

defined in section 24-30-1402 (6) must be made in accordance with the criteria set forth in section 24-30-1403 (2).

SECTION 5. In Colorado Revised Statutes, 24-37-304, **amend** (1) (c.3) (I) (A) as follows:

24-37-304. Additional budgeting responsibilities. (1) In addition to the responsibilities enumerated in section 24-37-302, the office of state planning and budgeting shall:

(c.3) (I) Ensure submission to the capital development committee of:

(A) Except for projects authorized pursuant to section 23-1-106 (9), ~~or (10)~~; C.R.S., all cash-funded capital construction or capital renewal budget requests by each state agency for the upcoming fiscal year no later than September 15 of each year;

SECTION 6. 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.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO