

CHAPTER 182

EDUCATION - UNIVERSITIES AND COLLEGES

SENATE BILL 98-082

BY SENATORS Alexander, Arnold, Matsunaka, and Norton;
also REPRESENTATIVES Dean, Allen, and Epps.

AN ACT

CONCERNING THE COLORADO POSTSECONDARY EDUCATIONAL FACILITIES AUTHORITY, AND, IN CONNECTION THEREWITH, CHANGING THE NAME OF THE AUTHORITY TO THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY AND MODIFYING THE INSTITUTIONS THAT MAY RECEIVE ASSISTANCE FROM THE AUTHORITY.

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

SECTION 1. 23-15-101, Colorado Revised Statutes, is amended to read:

23-15-101. Short title. This article shall be known and may be cited as the "Colorado ~~Postsecondary~~ Educational AND CULTURAL Facilities Authority Act".

SECTION 2. 23-15-102 (1), Colorado Revised Statutes, is amended to read:

23-15-102. Legislative declaration. (1) It is the intent of the general assembly to create the Colorado ~~postsecondary~~ educational AND CULTURAL facilities authority to lend money to EDUCATIONAL institutions ~~of postsecondary education~~ and cultural institutions; to authorize the authority to acquire, construct, reconstruct, repair, alter, improve, extend, own, lease, and dispose of properties to the end that the authority may be able to promote the welfare of the people of this state; to authorize the authority to administer the Colorado education savings program; to permit the bonds or certificates of participation of the authority and the bonds or certificates of participation of other issuers to be designated as Colorado education savings bonds or certificates; and to vest such authority with powers to enable such authority to accomplish such purposes. ~~but~~ It is not the intent of the general assembly to authorize the authority to operate any such ~~postsecondary~~ educational or cultural facility.

SECTION 3. 23-15-103 (1), (7) (a) (I), (8), and (9), Colorado Revised Statutes, are amended to read:

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

23-15-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Authority" means the Colorado ~~postsecondary~~ educational AND CULTURAL facilities authority created by this article.

(7) (a) (I) "Facility", in the case of a participating EDUCATIONAL institution, ~~of postsecondary education~~, means any structure or building suitable for use as a housing facility, an instructional facility, an administration building, a research facility, a laboratory, a maintenance, storage, or utility facility, an auditorium, a dining hall, a food service and preparation facility, a mental or physical health care facility, a recreational facility, or a student center facility or any other structure or facility required or useful for the operation of an EDUCATIONAL institution, ~~of postsecondary education~~, including, but not limited to: Offices, parking lots and garages, and other supporting service structures; any equipment, furnishings, and appurtenances necessary or useful in the operation of a participating EDUCATIONAL institution; ~~of postsecondary education~~; and the acquisition, preparation, and development of all real and personal property necessary or convenient as a site or sites for any such structure or facility.

(8) (a) "EDUCATIONAL institution" ~~of postsecondary education~~ means ~~an~~ ANY GOVERNMENTAL, QUASI-GOVERNMENTAL, OR NONPROFIT educational institution operating in this state which:

(I) Provides an educational program for which it awards a bachelor's degree; or

(II) Provides not less than a two-year program which is acceptable for full credit towards such a degree; or

(III) Provides not less than a six-month program of training to prepare students for gainful employment; or

(IV) Provides not less than a six-month program of training to develop, improve, or enhance the occupational skills of persons in their current positions of employment or of persons seeking employment in a new or different occupation;

(V) PROVIDES AN EDUCATIONAL PROGRAM PURSUANT TO A CHARTER FROM A SCHOOL DISTRICT IN ACCORDANCE WITH APPLICABLE LAWS; OR

(VI) PROVIDES AN EDUCATIONAL PROGRAM TO THE RESIDENTS OF THE STATE.

(b) "EDUCATIONAL institution" ~~of postsecondary education~~ does not include any pervasively sectarian or theological institution or any branch program of an EDUCATIONAL institution ~~of postsecondary education~~ whose principal campus and facilities are located outside this state.

(c) "EDUCATIONAL institution" ~~of postsecondary education~~ includes any private foundation, nonprofit association, or any other entity which is organized principally for the support and benefit of any educational institution defined in paragraph (a) of this subsection (8) and includes but is not limited to the Auraria higher education

center. Any reference in this article to "EDUCATIONAL institution of ~~postsecondary education~~ supported in whole or in part by state funds" includes but is not limited to the Auraria higher education center.

(9) "Refinancing of outstanding obligations" means liquidation, with the proceeds of bonds or notes issued by the authority, of any indebtedness of a participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution incurred prior to, on, or after July 1, 1981, to finance or aid in financing a lawful purpose of such institution not financed pursuant to this article which would constitute a facility had it been undertaken and financed by the authority. The term also means consolidation of such indebtedness with indebtedness of the authority incurred for a facility related to the purpose for which the indebtedness of such institution was initially incurred.

SECTION 4. 23-15-107 (1) (f), (1) (i), (1) (l), (1) (m), (1) (n), (1) (o), (1) (r), and (1) (s), Colorado Revised Statutes, are amended, and the said 23-15-107 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-15-107. General powers of the authority. (1) In addition to any other powers granted to the authority by this article, the authority shall have the following powers:

(f) To determine, in accordance with the provisions of this article, the location and character of any facility to be financed under the provisions of this article and to acquire, construct, reconstruct, renovate, improve, alter, replace, maintain, repair, operate, and lease such facility as lessee or lessor; to enter into contracts for any and all of such purposes and for the management and operation of a facility; and to designate a participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution as its agent to determine the location and character of a facility undertaken by such participating institution under the provisions of this article and, as agent of the authority, to acquire, construct, reconstruct, renovate, replace, alter, improve, maintain, repair, operate, lease as lessee or lessor, and regulate the same and to enter into contracts for any and all of such purposes including contracts for the management and operation of such facility;

(i) To establish rules and regulations, and to designate a participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution as its agent to establish such rules and regulations, for the use of the facilities undertaken or operated by such participating institution and to employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(l) To make mortgage loans or other secured or unsecured loans to any participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution for the cost of the facilities in accordance with an agreement between the authority and such participating institution; but no such loan shall exceed the total cost of such facilities as determined by such participating institution and approved by the authority;

(m) To make mortgage loans or other secured or unsecured loans to a participating

EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution; to refund outstanding obligations, mortgages, or advances issued, made, or given by such participating institution for the cost of its facilities, including the issuance of bonds and the making of loans to a participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution; or to refinance outstanding obligations and indebtedness incurred for facilities when the authority finds that such financing is in the public interest and alleviates the financial hardship upon the participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution or is in connection with other financing by the authority for such participating institution;

(n) To obtain or aid in obtaining, from any department or agency of the United States or of this state or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of the interest or principal, or both the interest and principal, or any part of either or both on any loan, lease, or obligation or any instrument evidencing or securing the same made or entered into pursuant to the provisions of this article and, notwithstanding any other provisions of this article, to enter into any agreement, contract, or other instrument whatsoever with respect to any such insurance or guarantee, to accept payment in such manner and form as provided therein in the event of default by a participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution, and to assign any such insurance or guarantee as security for the authority's bonds;

(o) To charge to and equitably apportion among participating EDUCATIONAL institutions of ~~postsecondary education~~ or cultural institutions the administrative costs and expenses of the authority incurred in the exercise of the powers granted and the duties conferred by this article;

(r) To make mortgage loans or other secured or unsecured loans to any person for the costs of a facility which will be made available for use by an EDUCATIONAL institution of ~~postsecondary education~~ or a cultural institution, if the governing body of such institution has resolved that the use of such facility will be in the best interests of such institution; but no such loan shall exceed the total cost of said facility as determined by said institution and approved by the authority;

(s) To refund or refinance, through the issuance of bonds and the making of loans, any outstanding obligations, mortgages, indebtednesses, or advances issued, made, or given by a person for the cost of facilities which will be made available for use by an EDUCATIONAL institution of ~~postsecondary education~~ or a cultural institution when the governing board of such institution finds that the use of said facility is in the best interests of said institution;

(5) NO MORTGAGE LOAN, OTHER SECURED OR UNSECURED LOAN, OR FINANCING, REFINANCING, REFUNDING, OR OTHER FINANCIAL OBLIGATION INCURRED PURSUANT TO THE TERMS OF THIS ARTICLE FOR THE BENEFIT OF A CHARTER SCHOOL AS DESCRIBED IN SECTION 23-15-103 (8) (a) (V), SHALL OBLIGATE, DIRECTLY OR INDIRECTLY, THE SCHOOL DISTRICT THAT GRANTED THE CHARTER TO THE CHARTER SCHOOL UNLESS:

- (a) THE EXPRESS WRITTEN CONSENT OF THE SCHOOL DISTRICT IS OBTAINED; AND
- (b) THE AUTHORITY OBTAINS A WRITTEN OPINION OF LEGAL COUNSEL THAT THE

OBLIGATION OF THE SCHOOL DISTRICT IS LEGALLY PERMISSIBLE UNDER THE COLORADO CONSTITUTION AND ALL APPLICABLE LAWS.

SECTION 5. 23-15-104 (1), Colorado Revised Statutes, is amended to read:

23-15-104. Authority - creation - board - organization. (1) (a) There is hereby created an independent public body politic and corporate to be known as the Colorado ~~postsecondary~~ educational AND CULTURAL facilities authority. Said authority is constituted a public instrumentality, and its exercise of the powers conferred by this article 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.

(b) THE LEGAL EFFECTS OF ANY STATUTE HERETOFORE DESIGNATING THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY BY ANY OTHER NAME, OR PROPERTY RIGHTS HERETOFORE INCURRED UNDER ANY OTHER NAME, SHALL NOT BE IMPAIRED.

SECTION 6. 23-15-105 (5), Colorado Revised Statutes, is amended to read:

23-15-105. Organizational meeting - chairman - executive director - surety bond - conflict of interest. (5) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any EDUCATIONAL institution, ~~of postsecondary education~~, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, or other firm, person, or corporation to serve as a member of the board; except that such trustee, director, officer, or employee shall disclose such interest to the board and may abstain from deliberation, action, and voting by the board in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

SECTION 7. 23-15-108, Colorado Revised Statutes, is amended to read:

23-15-108. Acquisition of property. The authority, directly or by or through a participating EDUCATIONAL institution ~~of postsecondary education~~ or cultural institution as its agent, may acquire by purchase, lease, gift, devise, or other means such lands, structures, real or personal property, rights-of-way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights which are located within or without the state, as it may deem necessary or convenient for the construction, acquisition, or operation of facilities, upon such terms as may be considered by the authority to be reasonable, and may take title thereto in the name of the authority or in the name of such participating EDUCATIONAL institution ~~of postsecondary education~~ or cultural institution as its agent.

SECTION 8. 23-15-110.5 (2) (e) and (4) (a), Colorado Revised Statutes, are amended to read:

23-15-110.5. Colorado education savings program. (2) Bonds or certificates of participation may be designated as Colorado education savings bonds or certificates pursuant to subsection (1) of this section if such instruments satisfy the

following criteria:

(e) The bonds or certificates are either zero-coupon, deep discount, or comparable instruments and the maturation dates of such instruments are structured to the extent possible both to accommodate the financing needs of the issuer or the entity on whose behalf the instruments are being issued and to fulfill the needs of individuals planning on using the proceeds of such instruments for ~~postsecondary~~ education purposes.

(4) The authority shall evaluate the feasibility of:

(a) Payment of financial incentives to holders of Colorado education savings bonds or certificates if, at maturity, the proceeds of such bonds or certificates are applied to expenses incurred for ~~postsecondary~~ education in the state of Colorado;

SECTION 9. 23-15-112 (3), Colorado Revised Statutes, is amended to read:

23-15-112. Security for bonds and notes. (3) In addition to the provisions of subsections (1) and (2) of this section, bonds of the authority may be secured by a pooling of leases, loans, or mortgages whereby the authority may assign its rights as lessor, lender, or mortgagee and pledge rents, loan payments, or mortgage payments under two or more leases, loans, or mortgages, with two or more participating EDUCATIONAL institutions ~~of postsecondary education~~ or cultural institutions as lessees, borrowers, or mortgagors, respectively, upon such terms as may be provided for in the resolutions of the authority or as may be provided for in a trust indenture or mortgage or deed of trust authorized by the authority.

SECTION 10. 23-15-115, Colorado Revised Statutes, is amended to read:

23-15-115. Procedure before expenditure of proceeds. (1) Notwithstanding any other provisions of this article, the authority may not undertake any facility authorized by this article unless, prior to the expenditure of proceeds, the board finds that:

(a) Such facility will enable or assist an EDUCATIONAL institution ~~of postsecondary education~~ or a cultural institution to fulfill its obligation to provide facilities; and

(b) In the case of an EDUCATIONAL institution, ~~of postsecondary education~~, such facility has been reviewed and approved by the commission if such approval is required pursuant to section 23-1-106.

SECTION 11. 23-15-117, Colorado Revised Statutes, is amended to read:

23-15-117. Payment of bonds - nonliability of state. Bonds and notes issued by the authority shall not constitute or become an indebtedness, a debt, or a liability of the state, the general assembly, or any county, city, city and county, town, school district, or other political subdivision of the state or of any other political subdivision or body corporate and politic within the state, and neither the state, the general assembly, nor any county, city, city and county, town, school district, or other political subdivision of the state shall be liable thereon; nor shall such bonds or notes constitute the giving, pledging, or loaning of the faith and credit of the state, the general assembly, or any county, city, city and county, town, school district, or other

political subdivision of the state or of any other political subdivision or body corporate and politic within the state, but such bonds or notes shall be payable solely from the funds provided for in this article. The issuance of bonds or notes under the provisions of this article shall not obligate, directly, indirectly, or contingently, the state or any subdivision thereof nor empower the authority to levy or collect any form of taxes or assessments therefor or to create any indebtedness payable out of taxes or assessments therefor or make any appropriation for their payment, and such appropriation or levy is prohibited. Nothing in this section shall prevent or be construed to prevent the authority from pledging its full faith and credit or the full faith and credit of a participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution to the payment of bonds or notes authorized pursuant to this article. Nothing in this article shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of Colorado or to authorize the authority to levy or collect taxes or assessments; and all bonds issued by the authority pursuant to the provisions of this article 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, mortgage, or deed of trust executed as security therefor and are not a debt or liability of the state of Colorado. The state shall not in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation, or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

SECTION 12. 23-15-118, Colorado Revised Statutes, is amended to read:

23-15-118. Exemption from taxation and securities law. The authority is hereby declared to be a public instrumentality of the state, performing a public function for the benefit of the people of the state for the improvement of their welfare and ~~postsecondary~~ educational and cultural opportunities. Accordingly, the income or other revenues of the authority, all properties at any time owned by the authority, any bonds, notes, or other obligations issued pursuant to this article and the transfer thereof and the income therefrom (including any profit made on the sale thereof), and all mortgages, leases, trust indentures, and other documents issued in connection therewith shall be exempt at all times from all taxation and assessments in the state of Colorado. Bonds issued by the authority shall also be exempt from the "Colorado Securities Act", article 51 of title 11, C.R.S.

SECTION 13. 23-15-119, Colorado Revised Statutes, is amended to read:

23-15-119. Rents and charges. A sufficient amount of the revenues derived with respect to a facility, except such part of such revenues as may be necessary to pay the cost of maintenance, repair, and operation and to provide reserves and for renewals, replacements, extensions, enlargements, and improvements provided for in the resolution authorizing the issuance of any bonds or notes of the authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds or notes as the same become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such

pledge shall be valid and binding at the time the pledge is made and thereafter until satisfied, and the rates, rents, fees, charges, and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort or contract or in any other form against the authority, irrespective of whether such parties have notice thereof. Neither the bond resolution, any trust agreement, any other agreement, nor any lease by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the resolution authorizing the issuance of such bonds or notes or to such trust agreement. Except as may be otherwise provided in such resolution or such trust agreement, such sinking or other similar fund may be a fund for all such bonds or notes issued to finance facilities at a particular EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution without distinction or priority of one over another; except that the authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular facility at an EDUCATIONAL institution of ~~postsecondary education~~ or a cultural institution and for the bonds issued to finance a particular facility and, additionally, may permit and provide for the issuance of bonds having a lien with respect to the security authorized which is subordinate to other bonds of the authority, and, in such case, the authority may create separate sinking or other similar funds with respect to such subordinate lien bonds.

SECTION 14. The introductory portion to 23-15-120 (2), Colorado Revised Statutes, is amended to read:

23-15-120. Fees. (2) Nothing in this article shall be construed to imply mandatory participation by an EDUCATIONAL institution of ~~postsecondary education~~ or a cultural institution. An initial planning service fee in an amount determined by the authority shall be paid to the authority by each participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution that applies for financial assistance to provide for its facilities. Such initial planning service fees shall be included in the cost of the facilities to be financed and shall not be refundable by the authority, whether or not any such application is approved or, if approved, whether or not such financial assistance is accomplished. In addition to such initial fee, an annual planning service fee shall be paid to the authority by each participating EDUCATIONAL institution of ~~postsecondary education~~ or cultural institution in an amount determined by the authority. Such fees shall be paid on said dates or in such installments as may be satisfactory to the authority. Such fees may be used for:

SECTION 15. 23-15-121, Colorado Revised Statutes, is amended to read:

23-15-121. Conveyance of title - release of lien. When the principal of and interest on bonds issued by the authority to finance the cost of facilities or to refinance the outstanding indebtedness of one or more participating EDUCATIONAL institutions of ~~postsecondary education~~ or cultural institutions, including any refunding bonds issued to refund and refinance such bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same and when all other conditions of the resolution, the lease, the trust indenture, and the mortgage, deed of trust, or other form of security arrangement, if any, authorizing and

securing the same have been satisfied, the authority shall promptly do all things and execute such deeds, conveyances, and other documents as are necessary and required to release the lien of such mortgage, deed of trust, or other form of security arrangement in accordance with the provisions thereof and to convey its right, title, and interest in such facilities so financed, and any other facilities leased or mortgaged or subject to a deed of trust or any other form of security arrangement to secure the bonds, to such participating EDUCATIONAL institution of postsecondary education or cultural institution.

SECTION 16. 24-32-1705 (1) (a) (IV), Colorado Revised Statutes, is amended to read:

24-32-1705. Allocations to state issuing authorities. (1) (a) Within thirty days after May 20, 1987, and as of January 15 in each year thereafter, fifty percent of the state ceiling shall be initially allocated among the following state issuing authorities in amounts established by the department:

(IV) The Colorado postsecondary educational AND CULTURAL facilities authority, created by section 23-15-104, C.R.S.; and

SECTION 17. 24-77-102 (15) (b) (V), 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:

(V) The Colorado postsecondary educational AND CULTURAL facilities authority created pursuant to section 23-15-104 (1), C.R.S.;

SECTION 18. 29-1-102 (13), Colorado Revised Statutes, is amended to read:

29-1-102. Definitions. As used in this part 1, unless the context otherwise requires:

(13) "Local government" means any authority, county, municipality, city and county, district, or other political subdivision of the state of Colorado; any institution, department, agency, or authority of any of the foregoing; and any other entity, organization, or corporation formed by intergovernmental agreement or other contract between or among any of the foregoing. The office of the county public trustee shall be deemed an agency of the county for the purposes of this part 1. "Local government" does not include the Colorado postsecondary educational AND CULTURAL facilities authority, the university of Colorado hospital authority, the Colorado student obligation bond authority, the Colorado health facilities authority, the Colorado housing and finance authority, the Colorado agricultural development authority, the Colorado sheep and wool authority, the Colorado beef council authority, the Colorado horse development board, the fire and police pension association, any public entity insurance or investment pool formed pursuant to state law, any county or municipal housing authority, any association of political subdivisions formed pursuant to section 29-1-401, or any home rule city or town,

home rule city and county, cities and towns operating under a territorial charter, school district, or junior college district.

SECTION 19. 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 4, 1998