

CHAPTER 326

GOVERNMENT - STATE

SENATE BILL 99-004

BY SENATORS Powers and Lamborn;
also REPRESENTATIVES Pfiffner, Clarke, Coleman, Fairbank, Mace, McKay, Mitchell, and Scott.

AN ACT

CONCERNING THE REQUIREMENTS IMPOSED ON THE NONPROFIT ACTIVITIES OF STATE-LEVEL ENTITIES.

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

SECTION 1. 24-1-107.5, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

24-1-107.5. Nonprofit entities created or supported by state agencies and state-level authorities - requirements - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) STATE AGENCIES AND STATE-LEVEL AUTHORITIES CURRENTLY BENEFIT FROM WORKING WITH NONPROFIT ENTITIES IN A VARIETY OF AREAS, INCLUDING CONTRACTING WITH NONPROFIT ENTITIES TO OBTAIN GOODS OR SERVICES, DEVELOPING WORKING RELATIONSHIPS WITH NONPROFIT ENTITIES TO FURTHER AN AGENCY'S OR AUTHORITY'S GOALS AND OBJECTIVES, AND USING NONPROFIT ENTITIES TO OBTAIN GIFTS, BEQUESTS, OR DONATIONS;

(b) ALTHOUGH STATE AGENCIES ALSO BENEFIT FROM THE ABILITY TO CREATE NONPROFIT ENTITIES TO ASSIST THEM IN CARRYING OUT THEIR STATUTORY POWERS AND DUTIES, THE EXPENDITURE OF STATE REVENUES THROUGH NONPROFIT ENTITIES CREATED BY STATE AGENCIES HAMPERS THE GENERAL ASSEMBLY'S ABILITY TO ADEQUATELY PERFORM ITS DUTIES OF MONITORING STATE REVENUES AND ENSURING THAT SUFFICIENT REVENUES ARE AVAILABLE FOR APPROPRIATIONS TO THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES OF GOVERNMENT;

(c) IN ORDER FOR THE GENERAL ASSEMBLY TO CARRY OUT ITS DUTIES TO PLAN FOR AND MONITOR STATE REVENUES, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO

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

ESTABLISH SPECIFIC STATUTORY REQUIREMENTS FOR THE CREATION OF NONPROFIT ENTITIES BY STATE AGENCIES TO PERFORM THEIR STATUTORY POWERS AND DUTIES AND TO ESTABLISH ACCOUNTABILITY REQUIREMENTS FOR CERTAIN NONPROFIT ENTITIES FORMED FOR THE BENEFIT OF STATE AGENCIES; AND

(d) IT IS THE FURTHER INTENT OF THE GENERAL ASSEMBLY TO:

(I) MONITOR THE CREATION OF NONPROFIT ENTITIES BY STATE-LEVEL AUTHORITIES WHERE THE CREATION OF SUCH ENTITIES COULD AFFECT THE PURPOSE FOR WHICH SUCH AUTHORITIES WERE ESTABLISHED BY IMPOSING SPECIFIC REPORTING REQUIREMENTS UPON THOSE AUTHORITIES INTENDING TO CREATE SUCH ENTITIES; AND

(II) RETAIN THE LAWS APPLICABLE TO THE SEPARATE IDENTITY OF NONPROFIT ENTITIES CREATED BY OR ON BEHALF OF STATE AGENCIES.

(2) (a) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, COMMENCING JULY 1, 1999, NO STATE AGENCY OR EMPLOYEE OR AGENT ACTING ON BEHALF OF SUCH AGENCY SHALL ESTABLISH A NONPROFIT ENTITY WITHOUT SPECIFIC STATUTORY AUTHORITY IF:

(A) THE PURPOSE OF ESTABLISHING A NONPROFIT ENTITY IS TO CARRY OUT THE GOVERNMENTAL FUNCTIONS OF THE STATE AGENCY; AND

(B) THE STATE AGENCY OR AN EMPLOYEE OR AGENT ACTING ON BEHALF OF SUCH AGENCY HAS ACTUAL CONTROL OVER THE MANAGEMENT AND INTERNAL OPERATIONS OF THE NONPROFIT ENTITY.

(II) THE PROVISIONS OF THIS PARAGRAPH (a) SHALL NOT LIMIT:

(A) THE OFFICE OF THE GOVERNOR;

(B) STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION FROM USING NONPROFIT ENTITIES, SUCH AS FOUNDATIONS, INSTITUTES, OR SIMILAR ORGANIZATIONS, AS AUTHORIZED IN SECTION 23-5-112, C.R.S.;

(C) STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION FROM ISSUING REVENUE BONDS OR PLEDGING REVENUES AS AUTHORIZED IN SECTIONS 23-5-102, 23-5-103, 23-70-107, AND 23-70-108, C.R.S.;

(D) THE COLORADO EDUCATIONAL AND CULTURAL FACILITIES AUTHORITY FROM FINANCING FACILITIES AND CAPITAL EXPENDITURES OR REFUNDING OR REFINANCING OUTSTANDING INDEBTEDNESS AS AUTHORIZED IN SECTIONS 23-15-107 TO 23-15-110, C.R.S.; AND

(E) STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION FROM CREATING OR USING NONPROFIT ENTITIES TO ISSUE OBLIGATIONS FOR OR ASSIST IN THE FINANCING OF CAPITAL EXPENDITURES ON BEHALF OF OR FOR THE BENEFIT OF SUCH INSTITUTIONS.

(b) NO LATER THAN SEPTEMBER 1, 1999, EACH STATE AGENCY SHALL PROVIDE TO THE STATE AUDITOR A LIST OF ALL NONPROFIT ENTITIES IN EXISTENCE ON JULY 1, 1999, THAT WERE ESTABLISHED BY THE STATE AGENCY OR AN EMPLOYEE OR AGENT

ACTING ON BEHALF OF SUCH AGENCY AND THAT MEET THE CRITERIA SET FORTH IN SUB-SUBPARAGRAPHS (A) AND (B) OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (2), ALONG WITH A COPY OF EACH NONPROFIT ENTITY'S MOST RECENT ANNUAL AUDIT REPORT OR, IF SUCH ENTITY HAS NOT BEEN AUDITED, THE ENTITY'S MOST RECENT ANNUAL FINANCIAL STATEMENT.

(c) THE PROVISIONS OF THIS SUBSECTION (2) DO NOT APPLY TO:

(I) THE COLORADO ADVANCED TECHNOLOGY INSTITUTE COMMISSION;

(II) ANY NONPROFIT CORPORATION CREATED BY THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO PURSUANT TO SECTION 23-20-114 (2), C.R.S.; OR

(III) ANY PRIVATE NONPROFIT CORPORATION CREATED BY ANY STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION, AS AUTHORIZED UNDER SECTION 23-5-121, C.R.S., FOR THE PURPOSE OF DEVELOPING DISCOVERIES AND TECHNOLOGY RESULTING FROM SCIENCE AND TECHNOLOGY RESEARCH AT SUCH INSTITUTION OF HIGHER EDUCATION.

(3) COMMENCING JULY 1, 1999, A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION INTENDING TO ESTABLISH A NONPROFIT ENTITY THAT WOULD OTHERWISE REQUIRE SPECIFIC STATUTORY AUTHORITY UNDER PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION MAY SEEK, IN LIEU OF OBTAINING SUCH AUTHORITY, APPROVAL FOR THE ESTABLISHMENT OF THE NONPROFIT ENTITY FROM THE COLORADO COMMISSION ON HIGHER EDUCATION.

(4) (a) (I) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 23-5-112 (3) AND 23-5-121, C.R.S., SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), AND PARAGRAPH (b) OF THIS SUBSECTION (4), ANY NONPROFIT ENTITY CREATED BY OR ON BEHALF OF A STATE AGENCY UNDER PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION OR SUBSECTION (3) OF THIS SECTION AND ANY NONPROFIT ENTITIES REPORTED UNDER PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION SHALL BE SUBJECT TO AN ANNUAL AUDIT BY THE STATE AUDITOR OR HIS OR HER DESIGNEE AS REQUIRED FOR STATE AGENCIES UNDER SECTION 2-3-103 (1), C.R.S.

(II) THE PROVISIONS OF THIS PARAGRAPH (a) DO NOT APPLY TO ANY NONPROFIT CORPORATION CREATED BY THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO PURSUANT TO SECTION 23-20-114 (2), C.R.S.

(b) IF ANY NONPROFIT ENTITY, CREATED FOR THE SOLE BENEFIT OF ONE OR MORE STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION, ISSUES OBLIGATIONS TO FINANCE CAPITAL EXPENDITURES FOR THE BENEFIT OF THE INSTITUTION OR INSTITUTIONS AND PLEDGES PAYMENTS TO BE RECEIVED FROM THE INSTITUTION OR INSTITUTIONS IN REPAYMENT OF SUCH OBLIGATIONS, SUCH CAPITAL FINANCING ACTIVITIES ARE SUBJECT TO THE SAME AUDIT REQUIREMENTS IMPOSED FOR GIFTS AND REQUESTS RECEIVED BY A NONPROFIT ENTITY UNDER SECTION 23-5-112 (3), C.R.S.

(5) (a) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), BEGINNING JULY 1, 1999, EACH STATE-LEVEL AUTHORITY INTENDING TO CREATE OR PARTICIPATE IN THE CREATION OF A NONPROFIT ENTITY SHALL FILE A STATEMENT WITH THE STATE AUDITOR REGARDING ITS INTENT TO CREATE SUCH ENTITY. THE

STATEMENT SHALL INCLUDE INFORMATION ABOUT THE PURPOSE AND USE OF THE NONPROFIT ENTITY. THE STATE-LEVEL AUTHORITY SHALL FILE SUCH STATEMENT AT LEAST THIRTY DAYS PRIOR TO THE INCORPORATION OF THE NONPROFIT ENTITY.

(II) FOR PURPOSES OF THE REQUIREMENTS SPECIFIED IN THIS PARAGRAPH (a), THE OFFICE OF THE GOVERNOR, THE UNIVERSITY OF COLORADO HOSPITAL AUTHORITY, CREATED IN PART 5 OF ARTICLE 21 OF TITLE 23, C.R.S., AND THE DENVER HEALTH AND HOSPITAL AUTHORITY CREATED IN PART 1 OF ARTICLE 29 OF TITLE 25, C.R.S., SHALL NOT BE REQUIRED TO PROVIDE NOTICE OF ITS INTENT TO CREATE A NONPROFIT ENTITY OR TO DISCLOSE ANY INFORMATION RELATING TO THE MODIFICATION, INITIATION, OR CESSATION OF PATIENT CARE PROGRAMS IF THE DISCLOSURE OF SUCH INFORMATION WOULD GIVE AN UNFAIR COMPETITIVE OR BARGAINING ADVANTAGE TO ANY PERSON OR ENTITY.

(b) FOR FISCAL YEARS ENDING AFTER JUNE 30, 1999, EACH STATE-LEVEL AUTHORITY SHALL REPORT THE ANNUAL FINANCIAL ACTIVITIES OF ANY NONPROFIT ENTITY IT HAS CREATED IN CONJUNCTION WITH THE FILING OF ITS ANNUAL FINANCIAL AUDIT REPORT WITH THE STATE AUDITOR AS REQUIRED UNDER SECTION 29-1-603, C.R.S. THE REPORTING OF SUCH FINANCIAL ACTIVITIES MAY BE A PART OF THE AUDITED FINANCIAL STATEMENTS IF THE FINANCIAL ACTIVITIES ARE SEPARATELY IDENTIFIED OR THE REPORTING MAY BE PERFORMED SEPARATELY.

(6) (a) EXCEPT AS PROVIDED IN THIS SECTION OR OTHER APPLICABLE LAW, ANY NONPROFIT ENTITY SUPPORTED BY OR ESTABLISHED BY OR ON BEHALF OF A STATE AGENCY SHALL NOT BE AN AGENCY OR DEPARTMENT OF STATE GOVERNMENT AND SHALL NOT BE SUBJECT TO ANY PROVISIONS OF LAW AFFECTING ONLY GOVERNMENTAL OR PUBLIC ENTITIES. THE STATE OF COLORADO OR THE APPLICABLE STATE AGENCY SHALL NOT BE HELD RESPONSIBLE FOR ANY DEBT OR LIABILITY INCURRED BY ANY NONPROFIT ENTITY SUPPORTED BY OR ESTABLISHED BY OR ON BEHALF OF A STATE AGENCY, EXCEPT AS OTHERWISE PROVIDED BY LAW.

(b) THE PROVISIONS OF THIS SUBSECTION (6) SHALL APPLY TO ANY NONPROFIT ENTITY SUPPORTED BY OR CREATED BY OR ON BEHALF OF A STATE AGENCY REGARDLESS OF WHETHER SUCH ENTITY IS SUBJECT TO THE REQUIREMENTS SPECIFIED IN THIS SECTION.

(7) FOR PURPOSES OF THIS SECTION:

(a) "NONPROFIT ENTITY" MEANS A NONPROFIT CORPORATION CREATED UNDER THE "COLORADO REVISED NONPROFIT CORPORATION ACT", ARTICLES 121 TO 137 OF TITLE 7, C.R.S. "NONPROFIT ENTITY" MAY INCLUDE, BUT IS NOT LIMITED TO, A CORPORATION, A PARTNERSHIP, A JOINT VENTURE, A FOUNDATION, AND AN INSTITUTE.

(b) "STATE AGENCY" MEANS AN AGENCY AS DEFINED IN SECTION 24-3-101 OR AN INSTITUTION OF HIGHER EDUCATION.

(c) "STATE-LEVEL AUTHORITY" MEANS A SPECIAL PURPOSE AUTHORITY AS DEFINED IN SECTION 24-77-102 (15) AND EXCLUDES NONPROFIT ENTITIES CREATED BY AND FOR LOCAL GOVERNMENTAL ENTITIES, SUCH AS MUNICIPALITIES, COUNTIES, CITY AND COUNTIES, SCHOOL DISTRICTS, AND SPECIAL DISTRICTS.

SECTION 2. 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: June 3, 1999