

CHAPTER 169

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 03-237

BY SENATOR(S) Anderson and Phillips;
also REPRESENTATIVE(S) Pommer and Paccione.

AN ACT

CONCERNING MONEYS FOR THE REPAYMENT OF SCHOOL DISTRICT OBLIGATIONS.

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

SECTION 1. 22-45-103 (1) (b) (I), Colorado Revised Statutes, is amended, and the said 22-45-103 (1) (b) is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBPARAGRAPHS, to read:

22-45-103. Funds. (1) The following funds are created for each school district for purposes specified in this article:

(b) **Bond redemption fund.** (I) The revenues from a tax levy for the purpose of satisfying bonded indebtedness obligations, both principal and interest, shall be recorded in the bond redemption fund, WHICH SHALL BE ADMINISTERED BY AT LEAST ONE THIRD-PARTY CUSTODIAN DESIGNATED BY THE SCHOOL DISTRICT AS PROVIDED IN SUBPARAGRAPH (V) OF THIS PARAGRAPH (b), UNLESS THE SCHOOL DISTRICT MEETS ONE OF THE EXCEPTIONS SPECIFIED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH (b). The bond redemption fund may include more than one subsidiary account for which a separate tax levy is made to satisfy the obligations of bonded indebtedness, including a separate tax levy to satisfy the obligations of bonded indebtedness incurred by a former school district. The revenues from each separate tax levy shall be held in trust for the purpose of satisfying the obligations of the bonded indebtedness for which the tax levy was made; except that revenues, if any, remaining to the credit of a separate subsidiary account after satisfaction of all such obligations of that subsidiary account may be transferred to another subsidiary account in the same fund.

(V) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH (b), ON OR BEFORE JULY 1, 2003, EACH SCHOOL DISTRICT SHALL SELECT AT LEAST ONE

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

COMMERCIAL BANK OR DEPOSITORY TRUST COMPANY, THAT HAS FULL TRUST POWERS, IS LOCATED WITHIN THE STATE OF COLORADO, AND IS A MEMBER OF THE FEDERAL DEPOSIT INSURANCE CORPORATION, TO ACT AS A THIRD-PARTY CUSTODIAN TO ADMINISTER THE SCHOOL DISTRICT'S BOND REDEMPTION FUND. A SCHOOL DISTRICT MAY SELECT MULTIPLE THIRD-PARTY CUSTODIANS TO ADMINISTER THE DISTRICT'S BOND REDEMPTION FUND, SO LONG AS EACH CUSTODIAN SELECTED MEETS THE REQUIREMENTS FOR A CUSTODIAN SPECIFIED IN THIS SUBPARAGRAPH (V). THE CUSTODIAN SHALL BE RESPONSIBLE FOR MAKING PAYMENTS FROM THE BOND REDEMPTION FUND AS PROVIDED BY LAW. THE CUSTODIAN, WITH THE AGREEMENT OF THE SCHOOL DISTRICT, MAY WITHDRAW ANY OR ALL OF THE MONEYS IN THE BOND REDEMPTION FUND THAT ARE TEMPORARILY NOT NEEDED TO SATISFY THE SCHOOL DISTRICT'S OBLIGATIONS, FOR PURPOSES OF DEPOSITING OR INVESTING THE MONEYS IN ANY INVESTMENTS PERMITTED BY LAW.

(VI) A SCHOOL DISTRICT IS NOT REQUIRED TO DESIGNATE A THIRD-PARTY CUSTODIAN TO ADMINISTER THE SCHOOL DISTRICT'S BOND REDEMPTION FUND IF THE COUNTY TREASURER KEEPS THE FUNDS AND ACCOUNTS OF THE SCHOOL DISTRICT AS PROVIDED IN SECTION 22-40-104. A SCHOOL DISTRICT IS NOT REQUIRED TO DESIGNATE A THIRD-PARTY CUSTODIAN TO ADMINISTER ANY PORTION OF THE SCHOOL DISTRICT'S BOND REDEMPTION FUND THAT CONSISTS OF REVENUES RECEIVED FROM BONDS OR OTHER OBLIGATIONS FOR WHICH THE SCHOOL DISTRICT HAS GIVEN NOTICE TO THE STATE TREASURER THAT IT WILL NOT ACCEPT PAYMENT BY THE STATE TREASURER ON BEHALF OF THE SCHOOL DISTRICT AS PROVIDED IN SECTION 22-41-110 (1) (a).

SECTION 2. 22-40-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

22-40-105. Depositories. (5) EXCEPT AS OTHERWISE PROVIDED IN SECTION 22-45-103 (1) (b) (VI), A THIRD-PARTY CUSTODIAN SELECTED BY A SCHOOL DISTRICT SHALL ADMINISTER THE SCHOOL DISTRICT'S BOND REDEMPTION FUND AS PROVIDED IN SECTION 22-45-103 (1) (b) (V). MONEYS IN A SCHOOL DISTRICT'S BOND REDEMPTION FUND MAY BE INVESTED BY THE CUSTODIAN AS PROVIDED IN SECTION 22-45-103 (1) (b) (V).

SECTION 3. 22-42-119 (1), Colorado Revised Statutes, is amended to read:

22-42-119. Bond fund - payment and redemption. (1) Such taxes shall be collected in the same manner as other school district taxes and when collected shall be placed by the county treasurer in the bond redemption fund of said school district. The moneys in said fund shall be used only for payment of interest upon and for the redemption of such bonds, upon orders signed and countersigned in the manner provided by law for the execution of other school district orders; but the board of education of said school district may withdraw, OR THE BOARD OF EDUCATION MAY INSTRUCT THE THIRD-PARTY CUSTODIAN ADMINISTERING THE BOND REDEMPTION FUND PURSUANT TO SECTION 22-45-103 (1) (b) (V) TO WITHDRAW, any or all of such moneys credited to said fund which are temporarily not needed to satisfy the obligations of bonded indebtedness, for the purpose of depositing or investing such moneys in the manner prescribed by law.

SECTION 4. 22-42-120 (2), Colorado Revised Statutes, is amended to read:

22-42-120. Place of payment. (2) It is the duty of the board of education of said school district to cause sufficient moneys from said tax levy or refunding escrow account to be placed from time to time at the place of payment, or optional place of payment, designated on said bonds in an amount to satisfy the principal and interest obligations of said bonds as the same may become due and payable from time to time. It is the duty of the treasurer of said school district to pay, or ~~cause to be paid~~ INSTRUCT THE THIRD-PARTY CUSTODIAN ADMINISTERING THE SCHOOL DISTRICT'S BOND REDEMPTION FUND PURSUANT TO SECTION 22-45-103 (1) (b) (V) TO PAY, the obligations of said bonds as the same may become due and payable, upon presentation of the bonds and coupons respectively evidencing such obligations, from any moneys to the credit of the appropriate account available for that purpose.

SECTION 5. 22-41-110 (1), (3), (5), and (8), Colorado Revised Statutes, are amended to read:

22-41-110. Timely payment of school district obligations. (1) (a) THE STATE TREASURER, ON BEHALF OF A SCHOOL DISTRICT, SHALL MAKE PAYMENT AS PROVIDED IN THIS SECTION OF PRINCIPAL AND INTEREST ON BONDS OR OTHER OBLIGATIONS TO WHICH THIS SECTION APPLIES, UNLESS THE SCHOOL DISTRICT BOARD OF EDUCATION ADOPTS A RESOLUTION STATING IT WILL NOT ACCEPT PAYMENT ON BEHALF OF THE SCHOOL DISTRICT OF PRINCIPAL AND INTEREST ON BONDS OR OTHER OBLIGATIONS AS PROVIDED IN THIS SECTION. IF A SCHOOL DISTRICT CHOOSES TO ADOPT SUCH A RESOLUTION, IT SHALL BE ADOPTED PRIOR TO ISSUANCE OR INCURRENCE OF THE BONDS OR OBLIGATIONS TO WHICH IT APPLIES. FOLLOWING ADOPTION OF THE RESOLUTION, THE SCHOOL DISTRICT SHALL PROVIDE WRITTEN NOTICE TO THE STATE TREASURER OF ITS REFUSAL TO ACCEPT THE PAYMENT. THE REFUSAL TO ACCEPT PAYMENT SHALL TAKE EFFECT UPON THE DATE THE STATE TREASURER RECEIVES THE WRITTEN NOTICE AND SHALL CONTINUE IN EFFECT UNTIL THE DATE THE STATE TREASURER RECEIVES WRITTEN NOTICE FROM THE SCHOOL DISTRICT THAT THE SCHOOL DISTRICT BOARD OF EDUCATION HAS ADOPTED A RESOLUTION RESCINDING THE REFUSAL TO ACCEPT PAYMENT PURSUANT TO THIS SECTION. NOTWITHSTANDING ANY PROVISION OF SUBSECTIONS (2) TO (8) OF THIS SECTION TO THE CONTRARY, THE STATE TREASURER SHALL NOT MAKE PAYMENT OF PRINCIPAL OR INTEREST ON BONDS OR OTHER OBLIGATIONS ON BEHALF OF A SCHOOL DISTRICT THAT PROVIDES WRITTEN NOTICE OF ITS REFUSAL TO ACCEPT PAYMENT BY THE STATE TREASURER ON BEHALF OF THE SCHOOL DISTRICT 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 general obligation bonds issued by a school district on or after July 1, 1991, pursuant to article 42 or 43 of this title, to obligations of a school district in connection with a lease agreement or installment purchase agreement entered into by a school district under section 22-32-127 or 22-45-103 (1) (c) on or after July 1, 1991, and to refunding bonds issued by a school district pursuant to article 56 of title 11, C.R.S.

(3) If the district indicates that it will not make the payment by the date on which it is due, 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 school district to the paying agent. ~~and shall withhold such amount from the next succeeding payment of the state's share of the district's total program~~

~~in accordance with article 54 of this title. If the amount of such next succeeding payment is insufficient to pay the amount necessary, the state treasurer shall withhold amounts from each succeeding payment of the state's share of the district's total program, including payments to be made in succeeding fiscal years but not to include more than twelve months' worth of payments, until the total payment of principal and interest has been withheld. A school district which does not receive any state assistance under the provisions of article 54 of this title does not qualify for state assistance in making timely payment of its bond or other obligations under this section.~~ THE STATE TREASURER SHALL RECOVER THE AMOUNT FORWARDED BY WITHHOLDING AMOUNTS FROM THE SCHOOL DISTRICT'S PAYMENTS OF THE STATE'S SHARE OF THE DISTRICT'S TOTAL PROGRAM RECEIVED IN ACCORDANCE WITH ARTICLE 54 OF THIS TITLE AND FROM PROPERTY TAX AND SPECIFIC OWNERSHIP TAX REVENUES COLLECTED BY THE COUNTY TREASURER ON BEHALF OF THE SCHOOL DISTRICT; EXCEPT THAT THE STATE TREASURER MAY NOT RECOVER AMOUNTS FROM PROPERTY TAX REVENUES THAT ARE PLEDGED TO PAY NOTES OR BONDS ISSUED BY THE SCHOOL DISTRICT. THE TOTAL AMOUNT WITHHELD IN A MONTH FROM THE STATE'S SHARE OF TOTAL PROGRAM AND THE TAX REVENUES DUE TO THE SCHOOL DISTRICT FOR EACH OCCASION ON WHICH THE TREASURER FORWARDS AN AMOUNT PURSUANT TO THIS SECTION SHALL NOT EXCEED ONE-TWELFTH OF THE AMOUNT FORWARDED; EXCEPT THAT THE STATE TREASURER, IN ONE OR MORE MONTHS DURING THE TWELVE-MONTH WITHHOLDING PERIOD, MAY WITHHOLD MORE THAN ONE-TWELFTH OF THE AMOUNT FORWARDED, IF THE SCHOOL DISTRICT IN ONE OR MORE MONTHS DURING THE TWELVE-MONTH WITHHOLDING PERIOD RECEIVES TOTAL PROGRAM AND TAX REVENUES IN AN AMOUNT THAT IS LESS THAN 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. THE STATE TREASURER, IN WRITING, SHALL NOTIFY THE COUNTY TREASURER FOR THE SCHOOL DISTRICT OF THE AMOUNT OF TAX REVENUES TO BE WITHHELD PURSUANT TO THIS SUBSECTION (3) AND THE PERIOD OF WITHHOLDING. NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (3) TO THE CONTRARY, A SCHOOL DISTRICT MAY ELECT TO MAKE EARLY REPAYMENT OF ALL OR ANY PORTION OF AN AMOUNT FORWARDED BY THE STATE TREASURER ON BEHALF OF THE SCHOOL DISTRICT PURSUANT TO THIS SECTION. WHEN A SCHOOL DISTRICT FULLY REPAYS AN AMOUNT FORWARDED BY THE STATE TREASURER ON BEHALF OF THE SCHOOL DISTRICT PURSUANT TO THIS SECTION, THE STATE TREASURER, IN WRITING, SHALL NOTIFY THE COUNTY TREASURER FOR THE SCHOOL DISTRICT TO DISCONTINUE THE WITHHOLDING OF TAX REVENUES.

(5) Any school district to which this section applies shall file with the state treasurer a copy of the resolution which authorizes the issuance of bonds or other obligations, a copy of the official statement or other offering document for such bonds or other obligations, the agreement, if any, with the paying agent for such bonds or other obligations, and the name, address, and telephone number of such paying agent. The failure of any school district to file such information shall not affect the obligation of the state treasurer to withhold the state's share of the district's total program AND THE DISTRICT'S TAX REVENUES under this section.

(8) Whenever the state treasurer makes a payment of principal and interest on bonds or other obligations of a school district and withholds amounts from the district's payments of the state's share of the district's total program AND FROM THE DISTRICT'S UNPLEDGED TAX REVENUES pursuant to this section because of the failure

to collect property taxes levied in accordance with law for the district's bond redemption fund, the district may transfer, OR MAY INSTRUCT THE THIRD-PARTY CUSTODIAN THAT ADMINISTERS THE DISTRICT'S BOND REDEMPTION FUND TO TRANSFER, any such delinquent property taxes later collected out of the district's bond redemption fund and into its general fund.

SECTION 6. 22-40-104 (1), Colorado Revised Statutes, is amended to read:

22-40-104. County treasurer - accounts - warrants. (1) (a) It is the duty of the county treasurer to keep separate accounts by funds and subsidiary accounts for the bond redemption fund of each school district in his OR HER county, and said funds and accounts shall be subject to the warrants of said district. The tax revenues shall be credited to the proper fund and account, together with any penalty interest collected thereon.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (1), UPON RECEIPT OF A NOTICE FROM THE STATE TREASURER ISSUED PURSUANT TO SECTION 22-41-110 (3), A COUNTY TREASURER SHALL WITHHOLD FROM THE SCHOOL DISTRICT NAMED IN THE NOTICE AND FORWARD TO THE STATE TREASURER THE AMOUNT OF TAX REVENUES SPECIFIED IN THE NOTICE THAT WOULD OTHERWISE BE CREDITED TO THE SCHOOL DISTRICT.

SECTION 7. 22-42-117 (2), Colorado Revised Statutes, is amended to read:

22-42-117. Board to certify needed revenues. (2) The board of education has authority to include in each amount certified for said bond redemption fund an amount to create a reserve for the redemption of bonds in future years prior to their maturities, FOR THE PAYMENT OF BONDS IN FUTURE YEARS EITHER PRIOR TO OR AT THEIR MATURITIES, or for purchasing at a discount and cancellation any bond on which the interest is being paid for the current district debt service mill levy; but said reserve shall be restricted to the subsidiary account in the bond redemption fund for which said tax levy was made.

SECTION 8. 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: April 22, 2003