

CHAPTER 215

EDUCATION - UNIVERSITIES AND COLLEGES

SENATE BILL 04-189

BY SENATOR(S) Anderson, Andrews, Arnold, Chlouber, Entz, Evans, Jones, McElhany, Owen, and Teck;
also REPRESENTATIVE(S) King, Fairbank, Hefley, Lundberg, Mitchell, Spence, and Stafford.

AN ACT**CONCERNING INSTITUTIONS OF HIGHER EDUCATION, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.**

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

SECTION 1. Legislative findings and declarations. (1) The general assembly finds that:

(a) For the future of the state of Colorado and its citizens, it is imperative that an increased number of Coloradans pursue education beyond high school;

(b) A postsecondary educational experience for Coloradans is essential for the state to compete in the new global economy and to develop a new generation of leaders and active participants in state and local civic affairs;

(c) In particular, it is critical that the rate of postsecondary participation by low-income Coloradans, males, and minorities, who are currently under-represented, be increased at every Colorado state institution of higher education; and

(d) It is appropriate to support programs that are designed to encourage participation in postsecondary education, that increase citizens' awareness of the value of and need for a postsecondary education, and that make citizens aware of the financial support provided by the general assembly to students and institutions of higher education.

(2) The general assembly further finds that without increased resources, Colorado's system of public higher education will be challenged in meeting the need for postsecondary education.

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

(3) The general assembly also finds that the governor created a blue ribbon panel on higher education consisting of prominent Colorado citizens, and the blue ribbon panel found that:

(a) Colorado is a paradox in terms of its citizens' overall educational attainment level and the participation of its high school students in higher education immediately following high school;

(b) During the past two decades, Colorado has been at the top or near the top of all states for the highest percentage of its adult population holding at least a bachelor's degree;

(c) According to a national report, Colorado was tied for twenty-seventh among all states with only thirty-nine percent of its high school freshmen going on within four years to attend a postsecondary institution;

(d) A substantial number of Coloradans are not participating in higher education, and, as a result, Colorado's citizens are not benefitting from the current system or the current funding of higher education;

(e) Based on these findings, the blue ribbon panel set as a goal increased access and opportunities for Coloradans by encouraging participation of groups who are currently under-represented, specifically low-income individuals, males, and minority groups, at every Colorado state institution of higher education and increased participation of recent high school graduates at those institutions; and

(f) The blue ribbon panel further recommended that the state fundamentally change the process by which postsecondary education is financed from that of funding institutions to funding individual students.

(4) The general assembly further finds that:

(a) Funding students can have the impact of strengthening competition among institutions which in turn can lead to improved quality and greater differentiation; and

(b) Greater resource flexibility for institutions can enhance more educational opportunities for low-income and other under-represented students, as well as increase educational excellence.

(5) Therefore, it is the intent of the general assembly that:

(a) This new funding system should encourage access and student enrollment for undergraduate students while maintaining distinctive missions of universities and colleges and encouraging geographical access;

(b) All Colorado residents should have access to the college opportunity fund; and

(c) Performance contracts should provide for greater flexibility and a more focused accountability for institutions to students and the people of Colorado.

(6) It is the intent of the general assembly in enacting this act to fundamentally

change the process by which the state finances postsecondary education from funding institutions to funding individuals.

(7) It is the further intent of the general assembly that:

(a) The state, through the Colorado commission on higher education, shall acquire from institutions of higher education specified educational services and facilities required for the full development of Colorado's educational and economic opportunities; and

(b) Such services shall be acquired under an agreement negotiated between the commission and the institutional governing boards pursuant to which the governing boards agree to provide specified educational services and facilities in exchange for the commission's payment, on behalf of the state, of agreed-upon charges.

(8) The general assembly finds and declares that:

(a) The provision of higher education services is a business; and

(b) For the purposes of determining whether an institution or group of institutions may be designated as an enterprise, so long as the institution or group of institutions receives less than ten percent of its total annual revenues in grants from all Colorado state and local governments combined, it is sufficient that the governing board of an institution of higher education has authority to issue revenue bonds on behalf of such institution or group of institutions.

(9) It is not the intent of the general assembly in enacting this act to cause the closure of any institution of higher education.

(10) While it is the general assembly's intent to change the process of funding for postsecondary education, funding for postsecondary education is not an entitlement. During periods of revenue shortfalls, the general assembly may use a variety of mechanisms to balance the state's budget, including reducing appropriations to institutions of higher education, decreasing the value of the stipend, or placing a limit on the number of stipends funded under this act based upon the overall budgetary needs of the state.

SECTION 2. Title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 18
College Opportunity Fund

PART 1
GENERAL PROVISIONS

23-18-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLLEGE OPPORTUNITY FUND ACT".

23-18-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COLLEGE OPPORTUNITY FUND" OR "FUND" MEANS THE COLLEGE OPPORTUNITY FUND CREATED IN SECTION 23-18-202.

(2) "COLLEGE OPPORTUNITY FUND PROGRAM" OR "PROGRAM" MEANS THE COLLEGE OPPORTUNITY FUND PROGRAM CREATED IN THE DEPARTMENT OF HIGHER EDUCATION PURSUANT TO SECTION 23-18-201 (1).

(3) "COMMISSION" MEANS THE COLORADO COMMISSION ON HIGHER EDUCATION ESTABLISHED PURSUANT TO SECTION 23-1-102.

(4) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF HIGHER EDUCATION ESTABLISHED PURSUANT TO SECTION 24-1-114, C.R.S.

(5) (a) "ELIGIBLE UNDERGRADUATE STUDENT" MEANS:

(I) A STUDENT WHO IS ENROLLED AT A STATE INSTITUTION OF HIGHER EDUCATION AND WHO IS CLASSIFIED AS AN IN-STATE STUDENT FOR TUITION PURPOSES; OR

(II) A STUDENT WHO IS ENROLLED AT A PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION AND WHO:

(A) IS CLASSIFIED AS AN IN-STATE STUDENT FOR TUITION PURPOSES;

(B) IS A GRADUATE OF A COLORADO HIGH SCHOOL OR HAS SUCCESSFULLY COMPLETED A NONPUBLIC HOME-BASED EDUCATIONAL PROGRAM AS PROVIDED IN SECTION 22-33-104.5, C.R.S.;

(C) DEMONSTRATES FINANCIAL NEED THROUGH THE STUDENT'S ELIGIBILITY FOR THE FEDERAL PELL GRANT, OR ITS SUCCESSOR PROGRAM; AND

(D) MEETS ANY OTHER ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE COMMISSION.

(b) "ELIGIBLE UNDERGRADUATE STUDENT" SHALL NOT MEAN A STUDENT ENROLLED IN AN OFF-CAMPUS, EXTENDED CAMPUS, OR CONTINUING EDUCATION CLASS, THAT IS NOT SUPPORTED BY STATE GENERAL FUND MONEYS, EXCEPT AS APPROVED BY THE COMMISSION.

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

(7) "INSTITUTION OF HIGHER EDUCATION" MEANS A PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION OR A STATE INSTITUTION OF HIGHER EDUCATION.

(8) "PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION" MEANS A PRIVATE INSTITUTION OF HIGHER EDUCATION THAT ENTERS INTO A PERFORMANCE CONTRACT WITH THE DEPARTMENT PURSUANT TO SECTION 23-5-128 AND AGREES TO PARTICIPATE IN THE PROGRAM.

(9) "PRIVATE INSTITUTION OF HIGHER EDUCATION" MEANS A NOT-FOR-PROFIT COLLEGE OR UNIVERSITY THAT IS NOT PERVASIVELY SECTARIAN AND THAT MAINTAINS

ITS PRIMARY PLACE OF BUSINESS IN THE STATE OF COLORADO, THAT OFFERS GENERAL BACCALAUREATE DEGREES IN ARTS AND SCIENCES, AND THAT IS INSTITUTIONALLY ACCREDITED ON THE BASIS OF AN ON-SITE REVIEW IN COLORADO BY ONE OF THE SIX NATIONALLY RECOGNIZED REGIONAL ACCREDITING ASSOCIATIONS OR BY AN ACCREDITING AGENCY DETERMINED BY THE COMMISSION TO BE APPROPRIATE TO ITS EDUCATIONAL PURPOSES AND PROGRAMS.

(10) (a) "STATE INSTITUTION OF HIGHER EDUCATION" MEANS A PUBLIC POSTSECONDARY INSTITUTION THAT IS GOVERNED BY:

(I) THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM;

(II) THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO;

(III) THE BOARD OF TRUSTEES OF THE COLORADO SCHOOL OF MINES;

(IV) THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTHERN COLORADO;

(V) THE BOARD OF TRUSTEES OF ADAMS STATE COLLEGE;

(VI) THE BOARD OF TRUSTEES OF WESTERN STATE COLLEGE OF COLORADO;

(VII) THE BOARD OF TRUSTEES OF MESA STATE COLLEGE;

(VIII) THE BOARD OF TRUSTEES FOR FORT LEWIS COLLEGE;

(IX) THE BOARD OF TRUSTEES FOR METROPOLITAN STATE COLLEGE OF DENVER;
OR

(X) THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION.

(b) "STATE INSTITUTION OF HIGHER EDUCATION" DOES NOT INCLUDE A JUNIOR COLLEGE THAT IS PART OF A JUNIOR COLLEGE DISTRICT ORGANIZED PURSUANT TO ARTICLE 71 OF THIS TITLE, WHICH DISTRICTS SHALL CONTINUE TO BE ELIGIBLE FOR DIRECT GRANT FUNDING FROM THE GENERAL ASSEMBLY PURSUANT TO SECTION 23-71-301.

(11) "STIPEND" MEANS THE AMOUNT OF MONEY PER CREDIT HOUR SPECIFIED PURSUANT TO SECTION 23-18-202 (2) (b) HELD IN TRUST FOR AND PAID ON BEHALF OF AN ELIGIBLE UNDERGRADUATE STUDENT PURSUANT TO SECTION 23-18-202 (5).

(12) "STUDENT'S SHARE OF IN-STATE TUITION" MEANS THE AMOUNT OF TOTAL IN-STATE TUITION, LESS ANY AMOUNT PAID ON BEHALF OF THE STUDENT AS A STIPEND.

(13) "TOTAL IN-STATE TUITION" MEANS THE TOTAL AMOUNT OF TUITION THAT IS PAID TO A STATE INSTITUTION OF HIGHER EDUCATION BY OR ON BEHALF OF A STUDENT WHO IS ELIGIBLE TO PAY IN-STATE TUITION, INCLUDING BUT NOT LIMITED TO THE AMOUNT OF THE STIPEND PAID ON BEHALF OF THE STUDENT.

PART 2

COLLEGE OPPORTUNITY FUND PROGRAM

23-18-201. College opportunity fund program - creation - eligibility - guidelines. (1) THERE IS HEREBY CREATED IN THE DEPARTMENT OF HIGHER EDUCATION THE COLLEGE OPPORTUNITY FUND PROGRAM, WHICH SHALL BE ADMINISTERED BY THE COLORADO STUDENT LOAN PROGRAM. THE COLLEGE OPPORTUNITY FUND, CREATED IN SECTION 23-18-202, SHALL BE A TRUST FUND FOR THE BENEFIT OF ELIGIBLE UNDERGRADUATE STUDENTS. IT SHALL CONSIST OF A STIPEND FOR EACH UNDERGRADUATE STUDENT IN COLORADO WHO APPLIES FOR THE STIPEND AND WHO IS ADMITTED AND REGISTERS TO ATTEND A STATE OR PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION AND IS DETERMINED TO BE ELIGIBLE BY THE COLORADO STUDENT LOAN PROGRAM TO RECEIVE A STIPEND. AN ELIGIBLE UNDERGRADUATE STUDENT MAY USE THE STIPEND FOR UNDERGRADUATE COURSES TAKEN AT A STATE OR PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION AT A FIXED RATE PER CREDIT HOUR, SET ANNUALLY BY THE GENERAL ASSEMBLY.

(2) A STUDENT OF A PRIVATE INSTITUTION OF HIGHER EDUCATION SHALL BE A BENEFICIARY OF THE COLLEGE OPPORTUNITY FUND AND ELIGIBLE TO PARTICIPATE IN THE COLLEGE OPPORTUNITY FUND PROGRAM ONLY IF THE PRIVATE INSTITUTION OF HIGHER EDUCATION THAT THE STUDENT ATTENDS HAS AGREED TO PARTICIPATE IN THE PROGRAM BY ESTABLISHING A PERFORMANCE CONTRACT WITH THE DEPARTMENT PURSUANT TO SECTION 23-5-128. THE DEPARTMENT SHALL INCLUDE EACH PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION AND ITS STUDENTS WHO PARTICIPATE IN THE COLLEGE OPPORTUNITY FUND PROGRAM IN THE STUDENT UNIT REPORTING DATA SYSTEM, IN ORDER TO ENABLE THE STUDENTS OF THE PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION TO PARTICIPATE IN THE PROGRAM. THE PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION SHALL REIMBURSE THE DEPARTMENT FOR THE ACTUAL EXPENSES ASSOCIATED WITH INCLUDING THE INSTITUTION IN THE STUDENT UNIT REPORTING DATA SYSTEM.

(3) THE COLORADO STUDENT LOAN PROGRAM, IN CONSULTATION WITH THE GOVERNING BOARDS, SHALL ADOPT THE NECESSARY POLICIES FOR THE IMPLEMENTATION OF THIS PART 2, WHICH AT A MINIMUM SHALL INCLUDE PROCEDURES FOR REQUESTING FUNDS FOR THE PROGRAM WHICH ADHERE TO COMMISSION BUDGET GUIDELINES AND THE ANNUAL BUDGETING CYCLE OF THE EXECUTIVE AND LEGISLATIVE BRANCHES.

(4) THE COLORADO STUDENT LOAN PROGRAM SHALL DIRECT ALL STATE AND PARTICIPATING PRIVATE INSTITUTIONS OF HIGHER EDUCATION TO REQUIRE RESIDENT UNDERGRADUATE STUDENTS TO APPLY FOR THE PROGRAM. IF A STUDENT IS CLASSIFIED AS AN IN-STATE STUDENT FOR TUITION PURPOSES AT A STATE INSTITUTION OF HIGHER EDUCATION AND DOES NOT APPLY FOR THE PROGRAM OR IS NOT ELIGIBLE FOR THE PROGRAM, THE STUDENT SHALL BE RESPONSIBLE FOR PAYING THE STUDENT'S TOTAL IN-STATE TUITION AMOUNT.

23-18-202. College opportunity fund - appropriations - payment of stipends - reimbursement. (1) (a) BEGINNING WITH THE STATE FISCAL YEAR COMMENCING JULY 1, 2005, AND FOR EACH STATE FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY SHALL MAKE AN ANNUAL APPROPRIATION, IN TRUST FOR ELIGIBLE UNDERGRADUATE STUDENTS, TO THE COLLEGE OPPORTUNITY FUND, WHICH IS HEREBY

ESTABLISHED AS A TRUST FUND ACCOUNT WITH THE COLORADO STUDENT LOAN PROGRAM. MONEYS APPROPRIATED TO THE COLLEGE OPPORTUNITY FUND ARE FOR THE SOLE PURPOSE OF DISBURSEMENT ON BEHALF OF ELIGIBLE UNDERGRADUATE STUDENTS IN ACCORDANCE WITH THIS PART 2 AND ARE NOT FOR THE GENERAL OPERATION OR ANY OTHER FUNCTION OF THE COLORADO STUDENT LOAN PROGRAM. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE COLLEGE OPPORTUNITY FUND AT THE END OF A FISCAL YEAR ARE THE PROPERTY OF THE TRUST FUND AND SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

(b) THE COLORADO STUDENT LOAN PROGRAM SHALL ADMINISTER AND DISBURSE THE FUNDS IN THE COLLEGE OPPORTUNITY FUND ON BEHALF OF ELIGIBLE UNDERGRADUATE STUDENTS AS PROVIDED IN THIS PART 2. EACH STATE INSTITUTION OF HIGHER EDUCATION AND PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION THAT DOES NOT RECEIVE LOAN ORIGINATION AND DISBURSEMENT SERVICES THROUGH THE COLORADO STUDENT LOAN PROGRAM SHALL PAY AN IMPLEMENTATION FEE AND AN ON-GOING DISBURSEMENT FEE, THE AMOUNTS OF WHICH SHALL BE DETERMINED BY THE COLORADO STUDENT LOAN PROGRAM BUT SHALL NOT EXCEED THE ACTUAL COST OF THE IMPLEMENTATION AND ON-GOING DISBURSEMENT.

(2) (a) FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2005, AND FOR EACH STATE FISCAL YEAR THEREAFTER, THE COMMISSION, IN CONSULTATION WITH THE GOVERNING BOARDS AND PARTICIPATING PRIVATE INSTITUTIONS, SHALL ANNUALLY ESTIMATE THE NUMBER OF UNDERGRADUATE FULL-TIME EQUIVALENT STUDENTS WHO ARE ELIGIBLE FOR STIPENDS UNDER THIS PART 2 AT EACH STATE INSTITUTION OF HIGHER EDUCATION AND EACH PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION. THE COMMISSION SHALL REPORT THE NUMBERS DURING THE ANNUAL BUDGET CYCLE TO THE GOVERNOR AND TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY FOR INCLUSION IN THE ANNUAL GENERAL APPROPRIATIONS ACT.

(b) FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2005, AND FOR STATE FISCAL YEARS THEREAFTER, FOR AN ELIGIBLE UNDERGRADUATE STUDENT ATTENDING A STATE INSTITUTION OF HIGHER EDUCATION, THE SPECIFIED AMOUNT OF THE STIPEND PER CREDIT HOUR SHALL BE AN AMOUNT SET ANNUALLY BY THE GENERAL ASSEMBLY, WHICH IN NO CASE SHALL EXCEED THE STUDENT'S TOTAL IN-STATE TUITION. THE VALUE OF THE PER CREDIT HOUR STIPEND SHALL BE THE SAME FOR EACH ELIGIBLE UNDERGRADUATE STUDENT, REGARDLESS OF THE STATE INSTITUTION OF HIGHER EDUCATION THAT THE STUDENT ATTENDS. THE STUDENT SHALL BE RESPONSIBLE FOR PAYING THE STUDENT'S SHARE OF TOTAL IN-STATE TUITION, IF ANY.

(c) THE COMMISSION SHALL FORWARD TO THE GENERAL ASSEMBLY AND GOVERNOR, BY NOVEMBER 1 OF EACH YEAR, A LIST OF INSTITUTIONS ELIGIBLE TO RECEIVE STIPENDS ON BEHALF OF ELIGIBLE UNDERGRADUATE STUDENTS UNDER THE PROGRAM. THE COMMISSION SHALL ANNUALLY REQUEST THAT THE GENERAL ASSEMBLY ADJUST THE AMOUNT APPROPRIATED TO THE COLORADO STUDENT LOAN PROGRAM FOR THE STIPENDS TO REFLECT AT LEAST INFLATION AND ENROLLMENT GROWTH IN THE STATE INSTITUTIONS OF HIGHER EDUCATION.

(d) BEGINNING WITH THE STATE FISCAL YEAR COMMENCING JULY 1, 2006, THE COMMISSION, IN CONSULTATION WITH THE GOVERNING BOARDS AND ANY

PARTICIPATING PRIVATE INSTITUTIONS OF HIGHER EDUCATION, SHALL REVIEW ANNUALLY THE AMOUNT OF THE STIPEND PER CREDIT HOUR ESTABLISHED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2). FOLLOWING THE REVIEW, THE COMMISSION, IN CONSULTATION WITH THE GOVERNING BOARDS AND PARTICIPATING PRIVATE INSTITUTIONS, SHALL ANNUALLY MAKE RECOMMENDATIONS REGARDING POSSIBLE ADJUSTMENTS TO THE AMOUNT OF THE STIPEND PER CREDIT HOUR TO THE GOVERNOR AND THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY FOR CONSIDERATION IN PREPARING THE ANNUAL GENERAL APPROPRIATIONS ACT.

(e) AN ELIGIBLE UNDERGRADUATE STUDENT WHO ATTENDS A PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION MAY RECEIVE FINANCIAL ASSISTANCE UNDER THIS PART 2 IN THE AMOUNT OF FIFTY PERCENT OF THE STIPEND AMOUNT; EXCEPT THAT THE AMOUNT OF THE STIPEND UNDER THIS PARAGRAPH (e) MAY INCREASE IN PROPORTION TO THE PERCENT OF UNFUNDED ENROLLMENT GROWTH THAT IS APPROPRIATED TO THE GOVERNING BOARDS PURSUANT TO SECTION 23-5-128 (8).

(3) (a) FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2005, AND FOR EACH STATE FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY SHALL APPROPRIATE SPENDING AUTHORITY TO EACH GOVERNING BOARD FOR THE CASH FUNDS EXEMPT ESTIMATED TO BE RECEIVED BY AN INSTITUTION, UNDER THE DIRECTION AND CONTROL OF THE GOVERNING BOARD, AS STIPENDS, CONSISTENT WITH THE PROVISIONS OF SECTION 23-1-104. THE SPENDING AUTHORITY FOR THE STIPENDS ESTIMATED TO BE RECEIVED SHALL BE CALCULATED BY MULTIPLYING THE AMOUNT OF THE APPLICABLE PER-CREDIT-HOUR STIPEND BY THE NUMBER OF ELIGIBLE STUDENT CREDIT HOURS THAT ARE ESTIMATED TO BE ATTRIBUTABLE TO EACH STATE INSTITUTION OF HIGHER EDUCATION UNDER THE DIRECTION AND CONTROL OF THE GOVERNING BOARD.

(b) THE TUITION INCREASES FROM WHICH THE GENERAL ASSEMBLY DERIVED THE TOTAL CASH SPENDING AUTHORITY FOR EACH GOVERNING BOARD SHALL BE NOTED IN A FOOTNOTE IN THE ANNUAL GENERAL APPROPRIATIONS ACT.

(c) IF AN INSTITUTION OF HIGHER EDUCATION IS DESIGNATED AS AN ENTERPRISE PURSUANT TO SECTION 23-5-101.7, THE INSTITUTION SHALL ANNUALLY ALLOCATE AT LEAST TWENTY PERCENT OF ANY INCREASE IN UNDERGRADUATE RESIDENT TUITION REVENUES ABOVE INFLATION TO NEED-BASED FINANCIAL ASSISTANCE.

(4) REGARDLESS OF WHEN AN INSTITUTION RECEIVES MONEYS IN THE FORM OF A STIPEND ON BEHALF OF A STUDENT, OR IF THE STIPEND AMOUNT IS REDUCED BY THE GENERAL ASSEMBLY, A STATE INSTITUTION OF HIGHER EDUCATION SHALL NOT INCREASE THE STUDENT'S SHARE OF IN-STATE TUITION TO MAKE UP FOR AN ACTUAL OR EFFECTIVE REDUCTION DURING THE SAME FISCAL YEAR IN THE STIPEND AMOUNT FROM WHICH THE TOTAL IN-STATE TUITION AMOUNT WAS CALCULATED OR FOR ISSUES RELATING TO THE TIMING OF STIPEND PAYMENTS.

(5) (a) AFTER AN UNDERGRADUATE STUDENT HAS APPLIED FOR THE PROGRAM, BEEN APPROVED FOR THE PROGRAM, AND ENROLLED IN A STATE OR PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION, THE INSTITUTION SHALL REQUEST THAT THE COLORADO STUDENT LOAN PROGRAM MAKE A STIPEND PAYMENT FROM THE COLLEGE OPPORTUNITY FUND TO THE INSTITUTION ON BEHALF OF THE ELIGIBLE UNDERGRADUATE STUDENT. A PAYMENT BY THE COLORADO STUDENT LOAN

PROGRAM TO AN INSTITUTION OF HIGHER EDUCATION FROM THE COLLEGE OPPORTUNITY FUND SHALL NOT BE SUBJECT TO THE ASSESSMENT OF A TRANSACTION FEE PURSUANT TO SECTION 24-36-120, C.R.S. THE STIPEND PAYMENT SHALL BE PAID TO THE INSTITUTION UPON RECEIPT BY THE INSTITUTION OF THE ELIGIBLE UNDERGRADUATE STUDENT'S AUTHORIZATION. THE AMOUNT OF THE STIPEND PAID ON BEHALF OF AN ELIGIBLE UNDERGRADUATE STUDENT SHALL BE APPLIED AGAINST THE STUDENT'S TOTAL IN-STATE TUITION.

(b) THE STIPEND PAID BY THE COLORADO STUDENT LOAN PROGRAM ON BEHALF OF THE ELIGIBLE UNDERGRADUATE STUDENT SHALL NOTE ON THE STUDENT'S RECEIPT OF PAYMENT FROM THE STATE OR PRIVATE INSTITUTION OF HIGHER EDUCATION THAT THE MONEYS CAME FROM THE COLLEGE OPPORTUNITY FUND.

(c) (I) AN ELIGIBLE UNDERGRADUATE STUDENT SHALL NOT RECEIVE A STIPEND FROM THE COLLEGE OPPORTUNITY FUND FOR MORE THAN ONE HUNDRED FORTY-FIVE CREDIT HOURS DURING THE ELIGIBLE UNDERGRADUATE STUDENT'S LIFETIME; EXCEPT THAT, IF AN ELIGIBLE UNDERGRADUATE STUDENT HAS RECEIVED PAYMENT FOR A STIPEND FOR ONE HUNDRED FORTY-FIVE CREDIT HOURS AND THE STUDENT HAS RECEIVED A BACHELOR'S DEGREE, THE ELIGIBLE UNDERGRADUATE STUDENT IS ELIGIBLE TO RECEIVE STIPEND PAYMENTS FOR AN ADDITIONAL THIRTY UNDERGRADUATE CREDIT HOURS.

(II) FOR AN ELIGIBLE UNDERGRADUATE STUDENT WHO IS ENROLLED AS A CONTINUING STUDENT AS OF JULY 1, 2005, THE COMMISSION SHALL DETERMINE THE NUMBER OF CREDIT HOURS FOR WHICH THE STUDENT MAY RECEIVE A STIPEND FROM THE COLLEGE OPPORTUNITY FUND, BASED ON THE NUMBER OF CREDIT HOURS THE ELIGIBLE UNDERGRADUATE STUDENT HAS EARNED.

(d) (I) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT RECEIVE THE PAYMENT OF A STIPEND ON BEHALF OF AN ELIGIBLE UNDERGRADUATE STUDENT FOR:

(A) BASIC SKILLS COURSES, AS DEFINED IN SECTION 23-1-113 (1) (b) (II) (A.7);

(B) COURSES TAKEN PURSUANT TO THE "POSTSECONDARY ENROLLMENT OPTIONS ACT", ARTICLE 35 OF TITLE 22, C.R.S.;

(C) HIGH SCHOOL FAST-TRACK COURSES TAKEN PURSUANT TO SECTION 22-34-101, C.R.S.;

(D) INTERNATIONAL BACCALAUREATE COURSES; OR

(E) ADVANCED PLACEMENT COURSES.

(II) THE INSTITUTION OF HIGHER EDUCATION IN WHICH AN ELIGIBLE UNDERGRADUATE STUDENT ENROLLS MAY CONTRACT WITH THE DEPARTMENT PURSUANT TO SECTION 23-5-129 TO PROVIDE THE COURSES SPECIFIED IN SUB-SUBPARAGRAPHS (A) TO (C) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d) FOR A FEE.

(e) NOTWITHSTANDING THE LIFETIME-CREDIT-HOUR LIMITATION ESTABLISHED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (5), AN ELIGIBLE UNDERGRADUATE

STUDENT MAY APPLY TO THE COMMISSION FOR A WAIVER OF THE LIMITATION. THE COMMISSION MAY GRANT A WAIVER OF THE LIFETIME-CREDIT-HOUR LIMITATION IF IT FINDS:

(I) THAT EXTENUATING CIRCUMSTANCES EXIST RELATED TO THE STUDENT'S HEALTH OR PHYSICAL ABILITY TO COMPLETE THE DEGREE PROGRAM WITHIN THE LIFETIME-CREDIT-HOUR LIMIT;

(II) THAT THE DEGREE PROGRAM, AS APPROVED BY THE COMMISSION, REQUIRES MORE THAN ONE HUNDRED TWENTY HOURS TO COMPLETE;

(III) THAT, WHILE THE ELIGIBLE UNDERGRADUATE STUDENT WAS ENROLLED IN A SPECIFIC DEGREE PROGRAM, THE COMMISSION APPROVED AND THE INSTITUTION IMPLEMENTED AN ALTERATION OF DEGREE REQUIREMENTS OR STANDARDS FOR THE SPECIFIC DEGREE; OR

(IV) THAT REQUIRING THE ELIGIBLE UNDERGRADUATE STUDENT TO PAY THE FULL AMOUNT OF TOTAL IN-STATE TUITION FOR CREDIT HOURS THAT EXCEED THE LIMITATION WOULD CAUSE A SUBSTANTIAL ECONOMIC HARDSHIP ON THE STUDENT AND THE STUDENT'S FAMILY.

(f) NOTWITHSTANDING THE LIFETIME-CREDIT-HOUR LIMITATION ESTABLISHED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (5) AND IN ADDITION TO THE PROVISIONS OF PARAGRAPH (e) OF THIS SUBSECTION (5), A STATE INSTITUTION OF HIGHER EDUCATION MAY ANNUALLY GRANT A ONE-YEAR WAIVER OF THE LIFETIME-CREDIT-HOUR LIMITATION FOR UP TO FIVE PERCENT OF THE ELIGIBLE UNDERGRADUATE STUDENTS ENROLLED IN THE STATE INSTITUTION OF HIGHER EDUCATION. IN GRANTING THE WAIVERS UNDER THIS PARAGRAPH (f), THE STATE INSTITUTION OF HIGHER EDUCATION SHALL GIVE PRIORITY TO STUDENTS WHO ARE SEEKING JOB RETRAINING.

(6) IF AN ELIGIBLE UNDERGRADUATE STUDENT ENROLLS IN A CLASS FOR WHICH THE STATE OR PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION RECEIVES A STIPEND PAYMENT PURSUANT TO SUBSECTION (5) OF THIS SECTION AND THE ELIGIBLE UNDERGRADUATE STUDENT SUBSEQUENTLY WITHDRAWS FROM THE CLASS ON OR PRIOR TO THE FINAL DATE ON WHICH THE INSTITUTION PERMITS A STUDENT TO WITHDRAW WITHOUT THE PAYMENT OF ANY AMOUNT OF TUITION, THE INSTITUTION SHALL REIMBURSE THE COLLEGE OPPORTUNITY FUND FOR THE PROPORTIONAL AMOUNT OF THE STIPEND RECEIVED THAT CONFORMS TO THE GOVERNING BOARD'S REFUND POLICY FOR THE CLASS FROM WHICH THE STUDENT WITHDREW. THE CREDITS FOR WHICH THE STIPEND IS REFUNDED SHALL NOT COUNT AGAINST THE ELIGIBLE UNDERGRADUATE STUDENT'S LIFETIME-CREDIT-HOUR LIMITATION ESTABLISHED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (5) OF THIS SECTION.

(7) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE AMOUNT OF A STIPEND RECEIVED BY A STATE INSTITUTION OF HIGHER EDUCATION ON BEHALF OF AN ELIGIBLE UNDERGRADUATE STUDENT PURSUANT TO THIS PART 2 SHALL NOT CONSTITUTE A GRANT FROM THE STATE OF COLORADO PURSUANT TO SECTION 20 (2) (d) OF ARTICLE X OF THE STATE CONSTITUTION.

(8) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT NOTHING IN THIS ARTICLE

PRECLUDE THE GENERAL ASSEMBLY AT A FUTURE TIME FROM INCLUDING A JUNIOR COLLEGE THAT IS PART OF A JUNIOR COLLEGE DISTRICT ORGANIZED PURSUANT TO ARTICLE 71 OF THIS TITLE IN THE COLLEGE OPPORTUNITY FUND PROGRAM.

23-18-203. College opportunity fund - data retention. (1) THE COMMISSION, IN COOPERATION WITH THE STATE AND PARTICIPATING PRIVATE INSTITUTIONS OF HIGHER EDUCATION, SHALL MAINTAIN A RECORD OF THE NUMBER OF CREDIT HOURS FOR WHICH EACH ELIGIBLE UNDERGRADUATE STUDENT RECEIVES A STIPEND FROM THE COLLEGE OPPORTUNITY FUND. THE COMMISSION SHALL ALSO MAINTAIN ANY CONFIDENTIAL INFORMATION CONCERNING ELIGIBLE UNDERGRADUATE STUDENTS PARTICIPATING IN THE PROGRAM.

(2) THE COMMISSION, IN CONSULTATION WITH THE GOVERNING BOARDS, SHALL DETERMINE BY POLICY WHEN TO FORWARD TO EACH STATE AND PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION A REPORT ON THE NUMBER OF CREDIT HOURS ACCUMULATED BY EACH ELIGIBLE UNDERGRADUATE STUDENT AGAINST THE LIFETIME-CREDIT-HOUR LIMITATION ESTABLISHED PURSUANT TO SECTION 23-18-202 (5) (c). EACH INSTITUTION SHALL MAKE THE INFORMATION ON THE NUMBER OF CREDIT HOURS ACCUMULATED AGAINST THE LIMITATIONS AVAILABLE TO THE STUDENT UPON REQUEST.

23-18-204. College opportunity fund - advertisement - disclosure. IF AN INSTITUTION OF HIGHER EDUCATION ADVERTISES, IN THE FORM OF DIRECT MAIL, PRINT, RADIO, TELEVISION, OR VIA THE INTERNET, A STUDENT'S ABILITY TO RECEIVE A STIPEND FROM THE COLLEGE OPPORTUNITY FUND, THE INSTITUTION OF HIGHER EDUCATION SHALL INCLUDE IN THE ADVERTISEMENT THE TOTAL COST OF ATTENDING THE INSTITUTION, INCLUDING A STUDENT'S TOTAL TUITION COST PLUS APPLICABLE FEES.

23-18-205. College opportunity fund - information - notification. (1) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE DEPARTMENT AND THE COMMISSION INFORM STUDENTS BEGINNING IN THE EIGHTH GRADE OF THE STATE'S FINANCIAL COMMITMENT TO STUDENTS TO ASSIST THEM IN CONTINUING THEIR EDUCATION BY ATTENDING COLLEGE AND OF THE ADDITIONAL FINANCIAL RESOURCES THAT MAY BE AVAILABLE TO THE STUDENTS IN ORDER TO FURTHER THEIR EDUCATION.

(2) (a) THE COMMISSION SHALL WORK WITH THE DEPARTMENT OF EDUCATION TO NOTIFY ANNUALLY EIGHTH-GRADE STUDENTS OF THE STATE'S CONTRIBUTION TO THE COLLEGE OPPORTUNITY FUND ON BEHALF OF RESIDENT STUDENTS AND THE MANNER IN WHICH THE STUDENTS MAY RECEIVE ADDITIONAL INFORMATION REGARDING FINANCIAL RESOURCES FOR HIGHER EDUCATION INCLUDING BUT NOT LIMITED TO THE AMOUNT OF THE STIPEND AND A STUDENT'S ABILITY TO USE SPECIFIC WEBSITES TO EXPLORE FINANCIAL AND ACADEMIC OPTIONS FOR PREPARING TO ENTER COLLEGE.

(b) THE COLORADO STUDENT LOAN PROGRAM SHALL INCLUDE INFORMATION REGARDING THE COLLEGE OPPORTUNITY FUND ON AN INTERNET WEBSITE TO ASSIST STUDENTS IN PLANNING FINANCIALLY AND ACADEMICALLY TO ATTEND AN INSTITUTION OF HIGHER EDUCATION IN COLORADO INCLUDING BUT NOT LIMITED TO THE CURRENT VALUE OF THE STIPEND.

23-18-206. College opportunity fund - directive. THE COLORADO STUDENT

LOAN PROGRAM AND THE STATE TREASURER, IN CONSULTATION WITH THE GOVERNING BOARDS, SHALL COOPERATIVELY ESTABLISH A DISBURSEMENT SCHEDULE FOR STIPENDS AWARDED PURSUANT TO THIS PART 2.

23-18-207. College opportunity fund - legislative declaration - commission report. (1) THE GENERAL ASSEMBLY FINDS THAT:

(a) NO OTHER STATE HAS TRIED TO CHANGE THE FUNDING OF INSTITUTIONS OF HIGHER EDUCATION FROM THE INSTITUTION TO THE STUDENT AS PROVIDED FOR IN THIS PART 2;

(b) BECAUSE THIS PART 2 CREATES A NEW AND UNTRIED PROGRAM, IT IS ANTICIPATED THAT DURING THE EARLY YEARS OF ITS IMPLEMENTATION, THERE MAY BE SOME UNANTICIPATED EFFECTS REQUIRING ADDITIONAL STATUTORY CHANGES.

(2) (a) BEGINNING JULY 1, 2006, AND CONTINUING THROUGH JULY 1, 2009, THE COMMISSION SHALL SUBMIT TO THE EDUCATION COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES AND TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY ANNUAL REPORTS ON THE STATUS OF THE PROGRAM ESTABLISHED PURSUANT TO THIS PART 2. THE ANNUAL REPORTS MAY INCLUDE, BUT ARE NOT LIMITED TO, RECOMMENDED STATUTORY CHANGES.

(b) ON OR BEFORE JULY 1, 2010, THE COMMISSION SHALL SUBMIT A FINAL REPORT TO THE EDUCATION COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES AND TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY ON THE IMPLEMENTATION OF THE PROGRAM ESTABLISHED PURSUANT TO THIS PART 2.

SECTION 3. Article 5 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

23-5-129. Governing boards - performance contract - authorization - operations. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "PRIVATE INSTITUTION OF HIGHER EDUCATION" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 23-18-102 (9).

(b) "STATE INSTITUTION OF HIGHER EDUCATION" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 23-18-102 (10).

(c) "UNFUNDED ENROLLMENT GROWTH" MEANS THE AMOUNT OF ENROLLMENT GROWTH CALCULATED PURSUANT TO SUBSECTION (8) OF THIS SECTION THAT HAS NOT BEEN FUNDED FOR EACH GOVERNING BOARD FROM STATE FISCAL YEAR 2000-01 THROUGH 2004-05.

(2) (a) BEGINNING JULY 1, 2004, EACH GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION SHALL NEGOTIATE A PERFORMANCE CONTRACT WITH THE DEPARTMENT OF HIGHER EDUCATION THAT SHALL SPECIFY THE PERFORMANCE GOALS THE INSTITUTION SHALL ACHIEVE DURING THE PERIOD THAT IT OPERATES UNDER THE PERFORMANCE CONTRACT. A STATE INSTITUTION OF HIGHER EDUCATION'S COMPLIANCE WITH THE GOALS SPECIFIED IN THE PERFORMANCE

CONTRACT MAY BE IN LIEU OF THE REQUIREMENTS OF ARTICLE 1 OF THIS TITLE AND THE "HIGHER EDUCATION QUALITY ASSURANCE ACT", ARTICLE 13 OF THIS TITLE, FOR THE PERIOD OF THE PERFORMANCE CONTRACT.

(b) IF A PRIVATE INSTITUTION OF HIGHER EDUCATION PLANS TO ACCEPT STIPENDS PAID ON BEHALF OF ELIGIBLE UNDERGRADUATE STUDENTS PURSUANT TO ARTICLE 18 OF THIS TITLE, THE PRIVATE INSTITUTION OF HIGHER EDUCATION SHALL NEGOTIATE A PERFORMANCE CONTRACT WITH THE DEPARTMENT OF HIGHER EDUCATION, WHICH SHALL SPECIFY THE PERFORMANCE GOALS THE INSTITUTION SHALL ACHIEVE DURING THE PERIOD THAT IT OPERATES UNDER THE PERFORMANCE CONTRACT.

(c) THE SPECIFIED PROCEDURES AND GOALS SET FORTH IN THE PERFORMANCE CONTRACT SHALL BE MEASURABLE AND TAILORED TO THE ROLE AND MISSION OF EACH INSTITUTION THAT IS UNDER THE DIRECTION AND CONTROL OF THE GOVERNING BOARD, AND MAY INCLUDE, BUT SHALL NOT BE LIMITED TO:

(I) IMPROVING COLORADO RESIDENTS' ACCESS TO HIGHER EDUCATION;

(II) IMPROVING QUALITY AND SUCCESS IN HIGHER EDUCATION;

(III) IMPROVING THE EFFICIENCY OF OPERATIONS; AND

(IV) ADDRESSING THE NEEDS OF THE STATE.

(d) TO MEASURE PROGRESS TOWARD THE GOALS SPECIFIED IN THE PERFORMANCE CONTRACT, THE FOLLOWING ISSUES MAY BE ADDRESSED:

(I) APPROPRIATE LEVELS OF STUDENT ENROLLMENT, TRANSFER, RETENTION, AND GRADUATION RATES AND INSTITUTIONAL PROGRAMS SPECIFICALLY DESIGNED TO ASSIST STUDENTS IN ACHIEVING THEIR ACADEMIC AND, IN THE CASE OF COMMUNITY COLLEGES, VOCATIONAL GOALS;

(II) STUDENT SATISFACTION AND STUDENT PERFORMANCE AFTER GRADUATION, MEASURED BY INDICATORS APPROPRIATE TO THE INSTITUTIONAL ROLE AND MISSION, SUCH AS EMPLOYMENT OR ENROLLMENT IN GRADUATE PROGRAMS;

(III) COMPARATIVE COST AND PRODUCTIVITY DATA IN RELATION TO PEER INSTITUTIONS;

(IV) ASSESSMENT OF THE QUALITY OF THE INSTITUTION'S ACADEMIC AND, WHERE RELEVANT, VOCATIONAL PROGRAMS, INCLUDING ASSESSMENT BY EXTERNAL REVIEWERS, SUCH AS ACCREDITATION BOARDS AND EMPLOYERS, AND CONSIDERATION OF STUDENT PERFORMANCE ON NATIONAL EXAMINATIONS; AND

(V) INCREASING FINANCIAL SUPPORT TO SUSTAIN AND ENHANCE ESSENTIAL FUNCTIONS THAT MAY BE PARTIALLY STATE FUNDED, INCLUDING BUT NOT LIMITED TO:

(A) THE PROVISION OF NEED-BASED AND OTHER STUDENT FINANCIAL AID;

(B) IN THE CASE OF A STATE INSTITUTION OF HIGHER EDUCATION, CAPITAL CONSTRUCTION;

(C) ASSESSMENT OF FINANCIAL INDICATORS COMPARED TO NATIONAL BENCHMARKS COMMONLY USED TO MEASURE FINANCIAL PERFORMANCE IN HIGHER EDUCATION ACCORDING TO THE TYPE OF INSTITUTION; AND

(D) INCREASING FINANCIAL SUPPORT TO SUSTAIN AND ENHANCE THE EDUCATIONAL MISSION OF THE INSTITUTION AND, IN THE CASE OF INSTITUTIONS WITH A RESEARCH MISSION, INCREASING PUBLIC AND PRIVATE RESEARCH CAPABILITIES AND COMPETITIVENESS.

(e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, INCREASING ENROLLMENT OF UNDERSERVED STUDENTS, INCLUDING LOW-INCOME INDIVIDUALS, MALES, AND MINORITY GROUPS, SHALL BE ADDRESSED IN EACH PERFORMANCE CONTRACT.

(f) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (2) TO THE CONTRARY, THE PROVISIONS OF THIS SUBSECTION (2) SHALL NOT APPLY TO THE PERFORMANCE CONTRACT WITH THE COLORADO SCHOOL OF MINES, AUTHORIZED BY SECTION 23-41-104.6, THAT IS IN PLACE ON JULY 1, 2004, UNTIL THE DEPARTMENT OF HIGHER EDUCATION RENEGOTIATES THE PERFORMANCE CONTRACT WITH THE SCHOOL OF MINES, TO TAKE EFFECT JULY 1, 2011.

(3) ALL PERFORMANCE CONTRACTS BETWEEN THE DEPARTMENT OF HIGHER EDUCATION AND ANY STATE OR PRIVATE INSTITUTION OF HIGHER EDUCATION SHALL BE REVIEWED AND APPROVED BY THE COLORADO COMMISSION ON HIGHER EDUCATION BEFORE THE CONTRACT MAY BECOME EFFECTIVE.

(4) NOTWITHSTANDING ANY REQUIREMENTS OF ARTICLE 101 OF TITLE 24, C.R.S., AND PART 11 OF ARTICLE 30 OF TITLE 24, C.R.S., TO THE CONTRARY, A GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION THAT OPERATES PURSUANT TO A PERFORMANCE CONTRACT NEGOTIATED PURSUANT TO THIS SECTION MAY NEGOTIATE WITH THE DEPARTMENT OF HIGHER EDUCATION, AFTER APPROVAL FROM THE COLORADO COMMISSION ON HIGHER EDUCATION, A PROVISION IN THE PERFORMANCE CONTRACT TO ALLOW AN EXEMPTION FROM THE PROCUREMENT CODE, ARTICLE 101 OF TITLE 24, C.R.S., AND THE CENTRAL STATE MOTOR VEHICLE FLEET SYSTEM, PART 11 OF ARTICLE 30 OF TITLE 24, C.R.S. THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HIGHER EDUCATION SHALL COMMUNICATE IN WRITING WITH THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL REGARDING ANY EXEMPTIONS GRANTED PURSUANT TO THIS SUBSECTION (4).

(5) (a) BEGINNING JANUARY 2006, AND EACH JANUARY THEREAFTER, THE DEPARTMENT OF HIGHER EDUCATION SHALL REPORT TO THE MEMBERS OF THE EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND THE MEMBERS OF THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THE FINANCIAL EFFECT OF THE PROVISIONS OF EACH PERFORMANCE CONTRACT WITH REGARD TO FUNDING FOR THE AFFECTED GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION AND OVERALL FUNDING FOR THE STATEWIDE SYSTEM OF HIGHER EDUCATION, ANY EXEMPTIONS GRANTED PURSUANT TO SUBSECTION (4) OF THIS SECTION, AND A REVIEW OF EACH STATE OR PRIVATE INSTITUTION'S OPERATIONS UNDER THE INSTITUTION'S PERFORMANCE CONTRACT. THE TERM OF A PERFORMANCE CONTRACT MAY BE UP TO TEN YEARS. THE DEPARTMENT OF HIGHER EDUCATION MAY RENEW A PERFORMANCE CONTRACT AT ITS DISCRETION, WITH THE AGREEMENT OF THE

GOVERNING BOARD.

(b) BEGINNING JANUARY 2006, AND EACH JANUARY THEREAFTER, DATA COLLECTED AND USED TO MEASURE A STATE OR PRIVATE INSTITUTION OF HIGHER EDUCATION'S PROGRESS TOWARDS THE GOALS SET FORTH IN THE INSTITUTION'S PERFORMANCE CONTRACT WITH THE DEPARTMENT OF HIGHER EDUCATION SHALL BE MADE AVAILABLE TO THE MEMBERS OF THE EDUCATION COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, MEMBERS OF THE JOINT BUDGET COMMITTEE, EACH GOVERNING BOARD, AND EACH INSTITUTION OF HIGHER EDUCATION COVERED BY A PERFORMANCE CONTRACT. THE DEPARTMENT OF HIGHER EDUCATION SHALL ALSO PROVIDE COPIES OF THE DATA TO OTHER MEMBERS OF THE GENERAL ASSEMBLY AND MEMBERS OF THE PUBLIC ON REQUEST.

(6) WHILE OPERATING PURSUANT TO A PERFORMANCE CONTRACT NEGOTIATED PURSUANT TO THIS SECTION, THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION:

(a) SHALL CONTINUE TO OPERATE AS THE GOVERNING BOARD FOR THE INSTITUTION. IN ADDITION, AT THE REQUEST OF THE GOVERNING BOARD, THE GOVERNOR MAY APPOINT ADDITIONAL ADVISORY MEMBERS TO THE GOVERNING BOARD TO SUSTAIN AND ENHANCE THE ROLE AND MISSION OF THE INSTITUTION. ADDITIONAL MEMBERS OF THE GOVERNING BOARD SHALL SERVE AS NONVOTING MEMBERS OF THE BOARD AND SHALL SERVE WITHOUT COMPENSATION. THE ROLE OF THE ADVISORY MEMBERS SHALL BE TO IMPROVE THE GOVERNING BOARD'S OPPORTUNITIES TO DEVELOP AND ENRICH THE ACADEMIC AND RESEARCH PROGRAMS AT THE INSTITUTION.

(b) NEED NOT CONSULT WITH NOR OBTAIN APPROVAL FROM THE COLORADO COMMISSION ON HIGHER EDUCATION TO CREATE, MODIFY, OR ELIMINATE ACADEMIC AND VOCATIONAL PROGRAMS OFFERED BY THE INSTITUTION, SO LONG AS SUCH CREATIONS, MODIFICATIONS, AND ELIMINATIONS ARE CONSISTENT WITH THE INSTITUTION'S STATUTORY ROLE AND MISSION. THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL HAVE THE AUTHORITY TO OVERRIDE ANY CREATION OR MODIFICATION OF AN ACADEMIC OR VOCATIONAL PROGRAM IF THE CHANGE MADE BY THE GOVERNING BOARD IS INCONSISTENT WITH THE INSTITUTION'S STATUTORY ROLE AND MISSION.

(c) SHALL REPORT TO THE COLORADO COMMISSION ON HIGHER EDUCATION ITS PLANS FOR ANY TUITION INCREASES FOR THE FOLLOWING ACADEMIC YEAR FOR THE COMMISSION TO FORWARD TO THE GENERAL ASSEMBLY DURING THE ANNUAL BUDGET PROCESS.

(7) WHILE OPERATING PURSUANT TO A PERFORMANCE CONTRACT NEGOTIATED PURSUANT TO THIS SECTION, A STATE INSTITUTION OF HIGHER EDUCATION SHALL:

(a) REMAIN ELIGIBLE FOR STATE-FUNDED CAPITAL CONSTRUCTION PROJECTS AND CONTROLLED MAINTENANCE PROJECTS AS PROVIDED IN SECTION 23-1-106;

(b) CONTINUE TO ADMIT COLORADO RESIDENT APPLICANTS WITHIN THE REQUIREMENTS OF SECTION 23-1-113.5 WHO MEET THE ADMISSIONS CRITERIA OF THE INSTITUTION.

(8) THE COLORADO COMMISSION ON HIGHER EDUCATION, IN CONSULTATION WITH THE GOVERNING BOARDS, SHALL CALCULATE THE AMOUNT OF UNFUNDED ENROLLMENT GROWTH. DURING THE PERIOD THAT A GOVERNING BOARD IS OPERATING PURSUANT TO A PERFORMANCE CONTRACT NEGOTIATED PURSUANT TO THIS SECTION, THE COLORADO COMMISSION ON HIGHER EDUCATION MAY REQUEST, AS PART OF THE ANNUAL BUDGET CYCLE, A GENERAL FUND APPROPRIATION FOR EACH GOVERNING BOARD FOR THE AMOUNT OF UNFUNDED ENROLLMENT GROWTH, TO THE EXTENT THAT THERE REMAINS AN AMOUNT OF ENROLLMENT GROWTH THAT IS UNFUNDED FOR THE GOVERNING BOARD.

(9) THE COLORADO SCHOOL OF MINES, WHILE OPERATING UNDER A PERFORMANCE CONTRACT PURSUANT TO SECTION 23-41-104.6, MAY NEGOTIATE WITH THE COLORADO COMMISSION ON HIGHER EDUCATION FOR EXEMPTIONS CONSISTENT WITH THE PROVISIONS OF SUBSECTION (4) OF THIS SECTION.

(10) WHILE A STATE INSTITUTION OF HIGHER EDUCATION IS OPERATING PURSUANT TO A PERFORMANCE CONTRACT NEGOTIATED PURSUANT TO THIS SECTION, THE GENERAL ASSEMBLY RETAINS THE AUTHORITY TO APPROVE TUITION SPENDING AUTHORITY FOR THE GOVERNING BOARD OF THE INSTITUTION.

23-5-130. Governing boards - fee-for-service contracts - authorization.

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

(a) "COMMISSION" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 23-18-102 (3).

(b) "DEPARTMENT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 23-18-102 (4).

(c) "STATE INSTITUTION OF HIGHER EDUCATION" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 23-18-102 (10).

(2) BEGINNING JULY 1, 2005, THE GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION MAY ANNUALLY NEGOTIATE A FEE-FOR-SERVICE CONTRACT WITH THE DEPARTMENT FOR THE DELIVERY OF HIGHER EDUCATION SERVICES BY THE INSTITUTION TO THE RESIDENTS OF THE STATE OF COLORADO. THESE SERVICES MAY INCLUDE, BUT NEED NOT BE LIMITED TO:

(a) EDUCATIONAL SERVICES IN RURAL AREAS OR COMMUNITIES IN WHICH THE COST OF DELIVERING THE EDUCATIONAL SERVICES IS NOT SUSTAINED BY THE AMOUNT RECEIVED IN STUDENT TUITION;

(b) BASIC SKILLS COURSES, AS DEFINED IN SECTION 23-1-113 (1) (b) (II) (A.7);

(c) EDUCATIONAL SERVICES ASSOCIATED WITH THE "POSTSECONDARY ENROLLMENT OPTIONS ACT", ARTICLE 35 OF TITLE 22, C.R.S.;

(d) EDUCATIONAL SERVICES ASSOCIATED WITH THE HIGH SCHOOL FAST TRACK PROGRAM PURSUANT TO SECTION 22-34-101, C.R.S.;

(e) EDUCATIONAL SERVICES REQUIRED OF THE COMMISSION TO MEET ITS

OBLIGATIONS UNDER RECIPROCAL AGREEMENTS PURSUANT TO SECTION 23-1-112;

(f) GRADUATE SCHOOL SERVICES;

(g) EDUCATIONAL SERVICES THAT MAY INCREASE ECONOMIC DEVELOPMENT OPPORTUNITIES IN THE STATE, INCLUDING COURSES TO ASSIST STUDENTS IN CAREER DEVELOPMENT AND RETRAINING; AND

(h) SPECIALIZED EDUCATIONAL SERVICES AND PROFESSIONAL DEGREES, INCLUDING BUT NOT LIMITED TO THE AREAS OF DENTISTRY, MEDICINE, VETERINARY MEDICINE, NURSING, LAW, FORESTRY, AND ENGINEERING.

(3) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT ANY INSTITUTION UNDER THE DIRECTION AND CONTROL OF A GOVERNING BOARD THAT ENTERS INTO A FEE-FOR-SERVICE CONTRACT FOR BASIC SKILLS COURSES NOT CHARGE A STUDENT MORE FOR A BASIC SKILLS COURSE THAN THE STUDENT WOULD OTHERWISE PAY PER CREDIT HOUR FOR ANY GENERAL EDUCATION COURSE.

SECTION 4. Article 1 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-1-109.7. Duties and powers of the commission with regard to the provision of educational services. (1) BEGINNING JULY 1, 2005, THE COMMISSION SHALL BE RESPONSIBLE FOR ENSURING THE PROVISION OF SPECIFIC POSTSECONDARY EDUCATIONAL SERVICES IN THE STATE. THESE EDUCATIONAL SERVICES SHALL INCLUDE BUT NEED NOT BE LIMITED TO:

(a) EDUCATIONAL SERVICES IN RURAL AREAS OR COMMUNITIES IN WHICH THE COST OF DELIVERING SUCH SERVICES IS NOT SUSTAINED BY THE AMOUNT RECEIVED IN STUDENT TUITION;

(b) BASIC SKILLS COURSES, AS DEFINED IN SECTION 23-1-113 (1) (b) (II) (A.7);

(c) EDUCATIONAL SERVICES ASSOCIATED WITH THE "POSTSECONDARY ENROLLMENT OPTIONS ACT", ARTICLE 35 OF TITLE 22, C.R.S.;

(d) EDUCATIONAL SERVICES ASSOCIATED WITH THE HIGH SCHOOL FAST TRACK PROGRAM PURSUANT TO SECTION 22-34-101, C.R.S.;

(e) EDUCATIONAL SERVICES REQUIRED OF THE COMMISSION TO MEET ITS OBLIGATIONS UNDER RECIPROCAL AGREEMENTS PURSUANT TO SECTION 23-1-112;

(f) GRADUATE SCHOOL SERVICES;

(g) EDUCATIONAL SERVICES THAT MAY INCREASE ECONOMIC DEVELOPMENT OPPORTUNITIES IN THE STATE, INCLUDING COURSES TO ASSIST STUDENTS IN CAREER DEVELOPMENT AND RETRAINING; AND

(h) SPECIALIZED EDUCATIONAL SERVICES AND PROFESSIONAL DEGREES, INCLUDING BUT NOT LIMITED TO THE AREAS OF DENTISTRY, MEDICINE, VETERINARY MEDICINE, NURSING, LAW, FORESTRY, AND ENGINEERING.

(2) THE DEPARTMENT OF HIGHER EDUCATION ON BEHALF OF THE COMMISSION SHALL ANNUALLY ENTER INTO FEE-FOR-SERVICE CONTRACTS WITH ONE OR MORE GOVERNING BOARDS OF INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE THE HIGHER EDUCATION SERVICES SPECIFIED IN SUBSECTION (1) OF THIS SECTION. THE DEPARTMENT OF HIGHER EDUCATION MAY CONTRACT WITH A GOVERNING BOARD OF AN INSTITUTION OF HIGHER EDUCATION ONLY TO THE EXTENT THAT THE CONTRACT REMAINS CONSISTENT WITH ANY CONTRACT ENTERED INTO PURSUANT TO SECTION 23-5-128 WITH THE GOVERNING BOARD.

(3) THE COMMISSION SHALL MAKE ANNUAL FUNDING RECOMMENDATIONS TO THE GENERAL ASSEMBLY AND THE GOVERNOR REGARDING THE FUNDING NECESSARY FOR THE DEPARTMENT OF HIGHER EDUCATION TO CONTRACT ON THE COMMISSION'S BEHALF FOR THE PROVISION OF HIGHER EDUCATION SERVICES IN THE STATE, INCLUDING BUT NOT LIMITED TO THE SERVICES SPECIFIED IN SUBSECTION (1) OF THIS SECTION. THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE TO THE COMMISSION AN AMOUNT OF GENERAL FUND MONEYS TO CARRY OUT THE PURPOSES OF THIS SECTION.

SECTION 5. 23-1-113.3 (2) (a), Colorado Revised Statutes, is amended to read:

23-1-113.3. Commission directive - basic skills courses. (2) (a) Adams state college, Mesa state college, any local community college, and any community college governed by the state board for community colleges and occupational education may offer and receive ~~course-reimbursement~~ FEE-FOR-SERVICE CONTRACT payments from the state for basic skills courses, as defined in section 23-1-113 (1) (b) (II) (A.7).

SECTION 6. 24-1-114 (5) (b), Colorado Revised Statutes, is amended to read:

24-1-114. Department of higher education - creation. (5) (b) With respect to the Colorado commission on higher education and the universities, colleges, and boards specified in subsection (4) of this section, the executive director shall have only those powers, duties, and functions prescribed in article 1 of title 23, C.R.S.; EXCEPT THAT THE EXECUTIVE DIRECTOR OF THE COLORADO COMMISSION ON HIGHER EDUCATION IS AUTHORIZED TO NEGOTIATE, IMPLEMENT, AND MONITOR CONTRACTS, AS DESCRIBED IN SECTIONS 23-5-128 AND 23-5-129, C.R.S., WITH UNIVERSITIES, COLLEGES, AND BOARDS, IN CONSULTATION WITH THE COLORADO COMMISSION ON HIGHER EDUCATION.

SECTION 7. 23-1-104 (1) (a) (I) and (1) (d), Colorado Revised Statutes, are amended to read:

23-1-104. Financing the system of postsecondary education - repeal. (1) (a) (I) The general assembly shall make annual appropriations of general fund moneys, ~~and~~ of cash funds received from tuition income, ~~pursuant to the provisions of section 23-1-103.5~~ AND OF CASH FUNDS EXEMPT THAT ARE ESTIMATED TO BE RECEIVED BY AN INSTITUTION, UNDER THE DIRECTION AND CONTROL OF THE GOVERNING BOARD, AS STIPENDS, AS DEFINED IN SECTION 23-18-102, as a single line item to each governing board for the operation of its campuses. ~~consistent with the distribution percentages developed by the commission pursuant to section 23-1-105 (3).~~ Except as otherwise provided in subsection (1.5) of this section, each governing board shall allocate said appropriations to the institutions under its control in the

~~manner deemed most appropriate by such governing board.~~

~~(d) The formulas established pursuant to this section shall exclude consideration of the programs authorized pursuant to article 15 of title 26, C.R.S.~~

SECTION 8. Article 5 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-5-101.7. Enterprise status of institutions of higher education. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "INSTITUTION OF HIGHER EDUCATION" OR "INSTITUTION" MEANS THE COLORADO STATE UNIVERSITY - PUEBLO, ADAMS STATE COLLEGE, MESA STATE COLLEGE, METROPOLITAN STATE COLLEGE OF DENVER, FORT LEWIS COLLEGE, WESTERN STATE COLLEGE OF COLORADO, THE UNIVERSITY OF NORTHERN COLORADO, COLORADO SCHOOL OF MINES, THE UNIVERSITY OF COLORADO, COLORADO STATE UNIVERSITY, AND ALL COMMUNITY COLLEGES GOVERNED BY THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION.

(2) AN INSTITUTION OF HIGHER EDUCATION, OR A GROUP OF INSTITUTIONS OF HIGHER EDUCATION THAT IS MANAGED BY A SINGLE GOVERNING BOARD, MAY BE DESIGNATED AS AN ENTERPRISE FOR THE PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS THE GOVERNING BOARD OF THE INSTITUTION OR GROUP OF INSTITUTIONS RETAINS AUTHORITY TO ISSUE REVENUE BONDS ON BEHALF OF THE INSTITUTION OR GROUP OF INSTITUTIONS AND THE INSTITUTION OR GROUP OF INSTITUTIONS RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL ANNUAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. SO LONG AS IT IS DESIGNATED AS AN ENTERPRISE PURSUANT TO THE PROVISIONS OF THIS SECTION, AN INSTITUTION OR GROUP OF INSTITUTIONS SHALL NOT BE SUBJECT TO ANY OF THE PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(3) IN PLEDGING REVENUES FOR THE REPAYMENT OF REVENUE BONDS ISSUED ON BEHALF OF AN INSTITUTION OF HIGHER EDUCATION OR GROUP OF INSTITUTIONS OF HIGHER EDUCATION THAT IS DESIGNATED AS AN ENTERPRISE, THE INSTITUTION OR GROUP OF INSTITUTIONS MAY PLEDGE INTERNAL REVENUES ONLY IF THE INSTITUTION OR GROUP OF INSTITUTIONS:

(a) IS ACCOUNTED FOR SEPARATELY IN INSTITUTIONAL FINANCIAL RECORDS; AND

(b) ENGAGES IN THE TYPE OF ACTIVITIES THAT ARE COMMONLY CARRIED ON FOR PROFIT OUTSIDE THE PUBLIC SECTOR.

(4) (a) THE GOVERNING BOARD OF AN INSTITUTION OF HIGHER EDUCATION MAY, BY RESOLUTION, DESIGNATE AN INSTITUTION OF HIGHER EDUCATION OR GROUP OF INSTITUTIONS OF HIGHER EDUCATION MANAGED BY THE GOVERNING BOARD AS AN ENTERPRISE SO LONG AS THE INSTITUTION OR GROUP OF INSTITUTIONS MEETS THE REQUIREMENTS FOR AN ENTERPRISE STATED IN SUBSECTION (2) OF THIS SECTION. EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), ANY SUCH ENTERPRISE DESIGNATION SHALL NOT TERMINATE, EXPIRE, OR BE RESCINDED AS LONG AS THE INSTITUTION OR GROUP OF INSTITUTIONS MEETS THE REQUIREMENTS FOR AN ENTERPRISE.

(b) ALL RESOLUTIONS ADOPTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL BE SUBMITTED BY THE ADOPTING GOVERNING BOARD TO THE OFFICE OF THE STATE AUDITOR IN THE FORM AND MANNER PRESCRIBED BY THE LEGISLATIVE AUDIT COMMITTEE. THE DESIGNATIONS SHALL BE REVIEWED BY THE OFFICE OF THE STATE AUDITOR TO DETERMINE WHETHER THE DESIGNATIONS ARE WITHIN THE AUTHORITY OF THE ADOPTING GOVERNING BOARD PURSUANT TO THE PROVISIONS OF THIS SECTION. THE LEGISLATIVE AUDIT COMMITTEE SHALL ALSO REVIEW THE DESIGNATIONS TO DETERMINE WHETHER THE DESIGNATIONS CONFORM WITH THE PROVISIONS OF THIS SECTION. THE OFFICIAL CERTIFICATE OF THE STATE AUDITOR AS TO THE FACT OF SUBMISSION OR THE DATE OF SUBMISSION OF A DESIGNATION AS SHOWN BY THE RECORDS OF THE OFFICE OF THE STATE AUDITOR, AS WELL AS TO THE FACT OF NONSUBMISSION AS SHOWN BY THE NONEXISTENCE OF SUCH RECORDS, SHALL BE RECEIVED AND HELD IN ALL CIVIL CASES AS COMPETENT EVIDENCE OF THE FACTS CONTAINED THEREIN. A DESIGNATION ADOPTED BY A GOVERNING BOARD OF AN INSTITUTION OR GROUP OF INSTITUTIONS OF HIGHER EDUCATION WITHOUT BEING SUBMITTED WITHIN TWENTY DAYS AFTER ADOPTION TO THE OFFICE OF THE STATE AUDITOR FOR REVIEW BY THE OFFICE AND BY THE LEGISLATIVE AUDIT COMMITTEE SHALL BE VOID.

(5) NOTWITHSTANDING ANY PROVISION OF SECTION 23-1-106 OR SECTION 24-75-303 (3), C.R.S., TO THE CONTRARY, THE GOVERNING BOARD OF AN INSTITUTION OF HIGHER EDUCATION OR GROUP OF INSTITUTIONS OF HIGHER EDUCATION THAT HAS BEEN DESIGNATED AS AN ENTERPRISE PURSUANT TO SUBSECTION (4) OF THIS SECTION SHALL HAVE THE EXCLUSIVE AUTHORITY TO APPROVE CASH FUNDED CAPITAL EXPENDITURES WITHIN THE INSTITUTION OR GROUP OF INSTITUTIONS FOR PROJECTS THAT ARE TO BE CONSTRUCTED, OPERATED, AND MAINTAINED SOLELY FROM STUDENT FEES, WHOLLY ENDOWED GIFTS AND BEQUESTS, RESEARCH BUILDING REVOLVING FUNDS, OR A COMBINATION OF SUCH SOURCES.

SECTION 9. 23-5-101.5 (2) (b) (II), Colorado Revised Statutes, is amended to read:

23-5-101.5. Enterprise status of auxiliary facilities. (2) As used in this article SECTION AND SECTIONS 23-5-101.7 TO 23-5-105.5:

(b) (II) "Grant" does not include:

(A) Any indirect benefit conferred upon an auxiliary facility, OR GROUP OF AUXILIARY FACILITIES OR AN INSTITUTION OR GROUP OF INSTITUTIONS from the state or any local government in Colorado, INCLUDING ANY INTEREST IN OR USE OF EXISTING FACILITIES OWNED, FUNDED, OR FINANCED BY THE GOVERNING BOARD OF AN INSTITUTION, THE STATE, OR ANY LOCAL GOVERNMENT IN COLORADO;

(B) Any revenues resulting from MARKET EXCHANGES SUCH AS rates, fees, assessments, TUITION, or other charges imposed by an auxiliary facility, OR GROUP OF AUXILIARY FACILITIES OR BY AN INSTITUTION OR GROUP OF INSTITUTIONS for the provision of goods or services by such auxiliary facility, GROUP OF AUXILIARY FACILITIES, INSTITUTION OR GROUP OF INSTITUTIONS, including SERVICES TO THE STATE OR A LOCAL GOVERNMENT IN COLORADO AND fees paid to the auxiliary facility OR GROUP OF AUXILIARY FACILITIES for internal services provided to the institution of higher education with which the auxiliary facility is associated;

(C) Any federal funds, regardless of whether such federal funds pass through the state or any local government in Colorado prior to receipt by an auxiliary facility, GROUP OF AUXILIARY FACILITIES, INSTITUTION, OR GROUP OF INSTITUTIONS;

(D) FEES RECEIVED BY AN INSTITUTION PURSUANT TO A FEE-FOR-SERVICE CONTRACT BETWEEN THE DEPARTMENT OF HIGHER EDUCATION AND THE INSTITUTION OR THE INSTITUTION'S GOVERNING BOARD;

(E) REVENUES RECEIVED BY AN INSTITUTION OR GROUP OF INSTITUTIONS THAT HAVE BEEN PAID ON BEHALF OF AN ELIGIBLE UNDERGRADUATE STUDENT FROM THE COLLEGE OPPORTUNITY FUND PURSUANT TO ARTICLE 18 OF THIS TITLE.

SECTION 10. 23-5-102, Colorado Revised Statutes, is amended to read:

23-5-102. Funding for auxiliary facilities - institutions of higher education - loans - bonds. (1) For the purpose of obtaining funds for constructing, otherwise acquiring, and equipping auxiliary facilities for the use of students and employees at any state educational institution or any branch thereof OR FACILITIES FOR USE BY ANY INSTITUTION OR GROUP OF INSTITUTIONS THAT IS DESIGNATED AS AN ENTERPRISE PURSUANT TO SECTION 23-5-101.7 and for the acquisition of land for such purposes, the governing board of any state educational institution is authorized, after notification to the commission on higher education, to enter into contracts with any person, corporation, or state or federal government agency for the advancement of money for such purposes and providing for the repayment of such advancements with interest at a specified net effective interest rate.

(2) The governing ~~body~~ BOARD of any institution of higher education by resolution may issue revenue bonds on behalf of any auxiliary facility or group of auxiliary facilities OR ON BEHALF OF ANY INSTITUTION OR GROUP OF INSTITUTIONS managed by such governing ~~body~~ BOARD for the purpose of obtaining funds for constructing, otherwise acquiring, equipping, or operating such auxiliary facility or group of auxiliary facilities OR FOR FACILITIES FOR SUCH INSTITUTION OR GROUP OF INSTITUTIONS. Any bonds issued on behalf of any auxiliary facility or group of auxiliary facilities, other than housing facilities, dining facilities, recreational facilities, health facilities, parking facilities, research facilities ~~which~~ THAT are funded from a revolving fund, or designated enterprise auxiliary facilities listed in section 23-5-101.5 (4) may be issued only after approval by both houses of the general assembly either by bill or by joint resolution and after approval by the governor in accordance with section 39 of article V of the state constitution. THE GOVERNING BOARD OF AN INSTITUTION OR GROUP OF INSTITUTIONS THAT ISSUES BONDS ON BEHALF OF THE INSTITUTION OR GROUP OF INSTITUTIONS, WHICH IS DESIGNATED AS AN ENTERPRISE PURSUANT TO SECTION 23-5-101.7, SHALL FILE NOTICE OF SUCH ISSUANCE WITH THE COLORADO COMMISSION ON HIGHER EDUCATION. Bonds issued pursuant to this subsection (2) shall be payable only from revenues generated by the auxiliary facility or group of auxiliary facilities OR BY THE INSTITUTION OR GROUP OF INSTITUTIONS on behalf of which such bonds are issued; except that, subject to section 23-1-123 (5) (a) (III) and (5) (b) (II), revenues generated by a designated enterprise ~~auxiliary facility~~ that is associated with the university of Colorado may be pledged for the repayment of bonds issued by another designated enterprise auxiliary facility ~~which~~ THAT is not part of the same enterprise. Such bonds shall be issued in accordance with the provisions of section 23-5-103 (2).

The termination, rescission, or expiration of the enterprise designation of any auxiliary facility or group of auxiliary facilities pursuant to section 23-5-101.5 (3) OR OF ANY INSTITUTION OR GROUP OF INSTITUTIONS shall not adversely affect the validity of or security for any revenue bonds issued on behalf of ~~such~~ ANY auxiliary facility or group of auxiliary facilities OR ON BEHALF OF ANY INSTITUTION OR GROUP OF INSTITUTIONS.

SECTION 11. 23-5-103 (1), Colorado Revised Statutes, is amended to read:

23-5-103. Pledge of income. (1) The governing board of any one or more state educational institutions, including, but not limited to, the state colleges under the control and operation of their respective boards of trustees, ~~which~~ THAT enters into such a contract for the advancement of moneys is authorized, in connection with or as a part of such contract, to pledge the net income derived or to be derived from such land or facilities so constructed, acquired, and equipped as security for the repayment of the moneys advanced therefor, together with interest thereon, and for the establishment and maintenance of reserves in connection therewith; and, for the same purpose, any such governing board is also authorized, subject to the limitations specified in section 23-1-123 (5), to pledge the net income derived or to be derived from other ~~auxiliary facilities which are not individually designated as enterprises and~~ ~~which~~ FACILITIES THAT ARE INCLUDED IN A DESIGNATED ENTERPRISE OR, IF NOT INCLUDED, OTHER FACILITIES THAT are not acquired and not to be acquired with moneys appropriated to the institution by the state of Colorado, and to pledge the net income, fees, and revenues derived from such sources, if unpledged, or, if pledged, the net income, fees, and revenues currently in excess of the amount required to meet principal, interest, and reserve requirements in connection with outstanding obligations to which such net income, fees, and revenues have theretofore been pledged. If the contract for the advancement of moneys is entered into by the university of Colorado on behalf of a designated enterprise auxiliary facility that is associated with the university of Colorado, the board of regents is authorized to pledge only the net income, including fees and revenues derived or to be derived from the designated enterprise auxiliary facility and any other designated enterprise auxiliary facilities.

SECTION 12. 24-77-102 (16) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

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

(16) (b) "State" does not include:

(I.5) AN INSTITUTION OR GROUP OF INSTITUTIONS OF HIGHER EDUCATION THAT HAS BEEN DESIGNATED AS AN ENTERPRISE PURSUANT TO SECTION 23-5-101.7, C.R.S.;

SECTION 13. 24-36-120 (4), Colorado Revised Statutes, is amended to read:

24-36-120. Authority to assess transaction fees. (4) The state treasurer shall not assess a fee for an eligible transaction involving any of the following funds:

(a) The state education fund created in section 17 (4) of article IX of the state

constitution;

(b) The highway users tax fund created in section 43-4-201, C.R.S.;

(c) The great outdoors Colorado trust fund created in section 2 of article XXVII of the state constitution;

(d) The public school fund described in section 3 of article IX of the state constitution;

(e) The old age pension fund created in section 1 of article XXIV of the state constitution; ~~and~~

(f) Any other fund against which the assessment of a fee would be contrary to the state constitution; AND

(g) THE COLLEGE OPPORTUNITY FUND CREATED IN ARTICLE 18 OF TITLE 23, C.R.S.

SECTION 14. Repeal. 23-41-104.6 (7), Colorado Revised Statutes, is repealed as follows:

~~**23-41-104.6. Performance contract - authorization - operations.** (7) During the period that the Colorado school of mines operates pursuant to the performance contract negotiated pursuant to this section, the general assembly shall make annual appropriations of general fund moneys as a single block grant for the support of resident students who are enrolled in the institution. Notwithstanding the provisions of section 23-1-105 and the distribution formula established by the Colorado commission on higher education, the commission and the board of trustees for the Colorado school of mines shall annually negotiate adjustments in said annual block grant appropriation of general fund moneys, taking into account the variety of factors affecting the level of costs incurred and the level of funding received by the Colorado school of mines.~~

SECTION 15. Repeal. 23-1-104 (1.5) and (2) and 23-1-105 (2) and (3), Colorado Revised Statutes, are repealed.

SECTION 16. Appropriations in long bill to be adjusted. (1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of higher education, governing boards and local district junior colleges, regents of the university of Colorado, governing board and general campuses, general fund and tuition allocation, for the fiscal year beginning July 1, 2004, shall be adjusted as follows:

(a) The general fund appropriation shall be reduced by four million five hundred thousand dollars (\$4,500,000).

(b) The cash funds appropriation shall be increased by four million five hundred thousand dollars (\$4,500,000). Said sum shall be from tuition.

SECTION 17. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other

provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 18. Effective date. (1) Except as provided in subsections (2) and (3) of this section, this act shall take effect July 1, 2004.

(2) Sections 5, 7, 14, and 15 of this act shall take effect July 1, 2005.

(3) Section 16 of this act shall take effect only if:

(a) During state fiscal year 2004-05, the board of regents of the university of Colorado designates the university of Colorado as an enterprise pursuant to section 23-5-101.7, Colorado Revised Statutes; and

(b) The board of regents of the university of Colorado files written notice with the revisor of statutes and the staff director of the joint budget committee of the enterprise designation specified in paragraph (a) of this subsection (3).

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 10, 2004