

CHAPTER 391

EDUCATION - UNIVERSITIES AND COLLEGES

SENATE BILL 04-252

BY SENATOR(S) McElhany, and Kester;
also REPRESENTATIVE(S) King, Carro ll, Garcia, Madden, Paccione, Plant, Pommer, Stafford, and Weddig.

AN ACT**CONCERNING FINANCING OF STATE 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 declaration. (1) The general assembly finds that greater resource flexibility for state institutions of higher education can enhance more educational opportunities, as well as increase educational excellence.

(2) The general assembly hereby 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, it is sufficient that 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 and the governing board of the institution of higher education or group of institutions has authority to issue revenue bonds on behalf of such institution or group of institutions.

SECTION 2. Article 5 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-5-101.8. Enterprise status of institutions of higher education - loans - bonds. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) (I) "GRANT" MEANS ANY DIRECT CASH SUBSIDY OR OTHER DIRECT CONTRIBUTION OF MONEY FROM THE STATE OR ANY LOCAL GOVERNMENT IN COLORADO WHICH IS NOT REQUIRED TO BE REPAYED.

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

(II) "GRANT" DOES NOT INCLUDE:

(A) ANY INDIRECT BENEFIT CONFERRED UPON 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 RATES, FEES, ASSESSMENTS, TUITION, OR OTHER CHARGES IMPOSED BY AN INSTITUTION OR GROUP OF INSTITUTIONS FOR THE PROVISION OF GOODS OR SERVICES BY SUCH INSTITUTION OR GROUP OF INSTITUTIONS, INCLUDING SERVICES TO THE STATE OR A LOCAL GOVERNMENT IN COLORADO; OR

(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 INSTITUTION OR GROUP OF INSTITUTIONS.

(b) "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) (a) 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.

(b) THE AUTHORITY FOR AN INSTITUTION OR GROUP OF INSTITUTIONS TO BE DESIGNATED AS AN ENTERPRISE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) SHALL BE IN ADDITION TO THE AUTHORITY GRANTED IN ANY OTHER PROVISION OF THIS ARTICLE.

(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 SUCH 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) FOR THE PURPOSE OF OBTAINING FUNDS FOR CONSTRUCTING, OTHERWISE ACQUIRING, AND EQUIPPING FACILITIES FOR USE BY ANY INSTITUTION OR GROUP OF INSTITUTIONS THAT ARE DESIGNATED AS AN ENTERPRISE PURSUANT TO THIS SECTION 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.

(6) THE GOVERNING BOARD OF ANY INSTITUTION OF HIGHER EDUCATION BY RESOLUTION MAY ISSUE REVENUE BONDS ON BEHALF OF ANY INSTITUTION OR GROUP OF INSTITUTIONS DESIGNATED AS AN ENTERPRISE PURSUANT TO THIS SECTION AND MANAGED BY SUCH GOVERNING BOARD FOR THE PURPOSE OF OBTAINING FUNDS FOR CONSTRUCTING, OTHERWISE ACQUIRING, EQUIPPING, OR OPERATING FACILITIES FOR SUCH INSTITUTION OR GROUP OF INSTITUTIONS. THE GOVERNING BOARD OF AN INSTITUTION OR GROUP OF INSTITUTIONS THAT ISSUES BONDS ON BEHALF OF THE INSTITUTION OR GROUP OF INSTITUTIONS SHALL FILE NOTICE OF SUCH ISSUANCE WITH THE COLORADO COMMISSION ON HIGHER EDUCATION. BONDS ISSUED PURSUANT TO

THIS SUBSECTION (6) SHALL BE PAYABLE ONLY FROM REVENUES GENERATED 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 THAT IS ASSOCIATED WITH THE UNIVERSITY OF COLORADO MAY BE PLEDGED FOR THE REPAYMENT OF BONDS ISSUED BY ANOTHER DESIGNATED ENTERPRISE 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 INSTITUTION OR GROUP OF INSTITUTIONS SHALL NOT ADVERSELY AFFECT THE VALIDITY OF OR SECURITY FOR ANY REVENUE BONDS ISSUED ON BEHALF OF ANY INSTITUTION OR GROUP OF INSTITUTIONS.

(7) A GOVERNING BOARD OF AN INSTITUTION OR GROUP OF INSTITUTIONS DESIGNATED AS AN ENTERPRISE PURSUANT TO THIS SECTION THAT HAS ENTERED INTO A CONTRACT FOR THE ADVANCEMENT OF MONEY ON BEHALF OF SUCH AN INSTITUTION OR GROUP OF INSTITUTIONS MAY PLEDGE UP TO TEN PERCENT OF TUITION REVENUES OF SUCH AN ENTERPRISE, EXCEPT FOR GENERAL FUND MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY, AND ALL OR A PORTION OF A FACILITY CONSTRUCTION FEE THAT MAY BE IMPOSED AS SECURITY FOR THE REPAYMENT OF THE MONEYS ADVANCED PURSUANT TO SAID CONTRACT. THE PLEDGE OF TUITION REVENUES OR THE IMPOSITION OF A FACILITY CONSTRUCTION FEE SHALL INCLUDE A PROCESS FOR STUDENT INPUT CONSISTENT WITH THE PROVISIONS OF SECTION 23-1-123.

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

23-5-101.9. Repeal. THIS SECTION AND SECTION 23-5-101.8 ARE REPEALED, EFFECTIVE JULY 1, 2007, ONLY IF SECTION 23-5-101.8 DOES NOT BECOME EFFECTIVE PRIOR TO SAID DATE PURSUANT TO SECTION 9 OF SENATE BILL 04-252 ENACTED DURING THE SECOND REGULAR SESSION OF THE SIXTY-FOURTH GENERAL ASSEMBLY.

SECTION 4. 23-5-103 (1), Colorado Revised Statutes, as amended by Senate Bill 04-189, enacted at the Second Regular Session of the Sixty-fourth General Assembly, 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, 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 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.~~ A GOVERNING BOARD OF AN INSTITUTION OR GROUP OF INSTITUTIONS DESIGNATED AS AN ENTERPRISE PURSUANT TO SECTION 23-5-101.7 THAT HAS ENTERED INTO A CONTRACT FOR THE ADVANCEMENT OF MONEY ON BEHALF OF SUCH AN INSTITUTION OR GROUP OF INSTITUTIONS MAY PLEDGE UP TO TEN PERCENT OF TUITION REVENUES OF SUCH AN ENTERPRISE, EXCEPT FOR GENERAL FUND MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY, AND ALL OR A PORTION OF A FACILITY CONSTRUCTION FEE THAT MAY BE IMPOSED AS SECURITY FOR THE REPAYMENT OF THE MONEYS ADVANCED PURSUANT TO SAID CONTRACT. THE PLEDGE OF TUITION REVENUES OR THE IMPOSITION OF A FACILITY CONSTRUCTION FEE SHALL INCLUDE A PROCESS FOR STUDENT INPUT CONSISTENT WITH THE PROVISIONS OF SECTION 23-1-123.

SECTION 5. Repeal. 23-5-101.7 (5), Colorado Revised Statutes, as enacted by Senate Bill 04-189, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is repealed as follows:

23-5-101.7. Enterprise status of institutions of higher education. (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 6. 23-20-129.5 (2)(d), Colorado Revised Statutes, is amended to read:

23-20-129.5. Enterprise auxiliary facility bonds. (2) The policies and procedures adopted pursuant to subsection (1) of this section shall include, but need not be limited to, the following requirements:

(d) That the maximum annual debt service on all revenue bonds issued pursuant to section 23-5-102, EXCEPT AS PROVIDED FOR IN SECTIONS 23-5-101.8 AND 23-5-103, outstanding at any time for the university shall not exceed ten percent of the university's unrestricted current fund expenditures plus mandatory transfers;

SECTION 7. 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:

(1.5) AN INSTITUTION OR GROUP OF INSTITUTIONS OF HIGHER EDUCATION THAT HAS

BEEN DESIGNATED AS AN ENTERPRISE PURSUANT TO SECTION 23-5-101.8, C.R.S.;

SECTION 8. 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 9. Effective date. (1) Except as provided in subsections (2), (3), and (4) of this section, this act shall take effect July 1, 2004.

(2) Sections 4 and 5 of this act shall take effect only if Senate Bill 04-189 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

(3) Sections 2 and 7 of this act shall take effect only if:

(a) Senate Bill 04-189 does not become law; or

(b) (I) A civil action is filed in a court of competent jurisdiction that includes as a claim for relief a request for a ruling that section 23-5-101.5 (2) (b) (II) or 23-5-101.7, Colorado Revised Statutes, is invalid or if a court issues an order staying the implementation of said sections; and

(II) The executive director of the Colorado commission of higher education files written notice with the revisor of statutes of the filing or court order specified in subparagraph (I) of this paragraph (b).

(4) Section 8 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 23-5-101.8, 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 (4).

SECTION 10. 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 4, 2004