

CHAPTER 107

HEALTH AND ENVIRONMENT

HOUSE BILL 07-1213

BY REPRESENTATIVE(S) Labuda, McGihon, Borodkin, Frangas, Gibbs, Kefalas, and Todd;
also SENATOR(S) Boyd.

AN ACT

CONCERNING THE COLORADO HEALTH FACILITIES AUTHORITY.

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

SECTION 1. 25-25-102, Colorado Revised Statutes, is amended to read:

25-25-102. Legislative declaration. (1) The general assembly hereby finds and declares that, for the benefit of the people of the state of Colorado and the improvement of their health, welfare, and living conditions:

(a) It is essential that the people of this state have adequate medical care and health facilities; ~~that~~

(b) It is important that medical care and health facilities are made readily available by networks and organizations of health institutions, whether such networks and organizations are located within the state of Colorado or have facilities located both within and outside the state of Colorado; ~~that~~

(c) It is a benefit to the people of the state of Colorado to serve such multistate institutions, ~~in that~~ AS SUCH SERVICE WILL CREATE health care-related employment opportunities; ~~will be created thereby; that~~

(d) It is essential that health institutions ~~with health facilities or~~ THAT HAVE headquarters ~~within the state~~ IN COLORADO OR THAT OPERATE OR MANAGE HEALTH FACILITIES IN COLORADO, AND AFFILIATES OF SUCH HEALTH INSTITUTIONS, be provided with appropriate additional means to assist in the development and maintenance of public health, health care, hospitals, and related facilities wherever such HEALTH institutions are located in order that THEY CAN PROVIDE more adequate

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

medical care and health facilities ~~can be provided by such health institutions to the people of the state of Colorado; that~~

(e) It is the purpose of this article to provide a measure of assistance to enable health institutions in the state to refund or refinance outstanding indebtedness incurred for health facilities and to provide additional facilities and structures ~~which~~ THAT are greatly needed to accomplish the purposes of this article; ~~that~~ AND

(f) The exemption OF BONDS AND NOTES ISSUED PURSUANT TO THIS ARTICLE from all taxation and assessments in the state of Colorado ~~of bonds and notes issued pursuant to the provisions of this article~~ benefit only the residents of the state of Colorado. ~~all to the public benefit and good as provided in this article.~~

(2) It is the intent of the general assembly to create the Colorado health facilities authority to lend money to health institutions and to authorize the authority to acquire, construct, reconstruct, repair, alter, improve, extend, own, lease, and dispose of properties ~~to the end~~ SO that the authority may be able to promote the health and welfare of the people of this state ~~to~~ AND develop health care-related employment opportunities for the people of this state. ~~and~~ IN ENACTING THIS ARTICLE, IT IS THE INTENT OF THE GENERAL ASSEMBLY to vest ~~such~~ THE authority with THE powers ~~to enable such authority~~ NECESSARY to accomplish ~~such purpose~~ THESE PURPOSES. However, it is not the intent of the general assembly to authorize the authority to operate ~~any such~~ A health facility.

(3) This article shall be liberally construed to accomplish the intentions expressed in this section.

SECTION 2. 25-25-103 (5), (6), and (7), Colorado Revised Statutes, are amended, and the said 25-25-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

25-25-103. Definitions. As used in this article, unless the context otherwise requires:

(5) "Costs", as applied to facilities financed in whole or in part under the provisions of this article, means and includes the sum total of all reasonable or necessary costs incidental to:

(a) The acquisition, construction, reconstruction, repair, alteration, equipment, enlargement, improvement, and extension of such facilities; and

(b) The acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interest acquired, necessary, or used for, or useful for or in connection with, a facility; and

(c) All other undertakings ~~which~~ THAT the authority deems reasonable or necessary for the development of a facility, including, without limitation, the cost of OR FOR:

(I) Studies and surveys; ~~the costs for~~

(II) Land title and mortgage guaranty policies;

(III) Plans, specifications, and architectural and engineering services;

(IV) Legal, accounting, organization, marketing, or other special services;

(V) Financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings;

(VI) Rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(VII) All other necessary and incidental expenses, including working capital and an initial bond and interest reserve funds, together with interest on bonds issued to finance such facilities to ~~a date not more than six months subsequent to the estimated date of completion~~ THE EXTENT PERMITTED UNDER APPLICABLE FEDERAL TAX LAW.

(6) (a) "Health facility" or "facility", in the case of a participating health institution, means any structure or building, whether such structure or building is located within the state or whether such structure or building is located outside the state if an out-of-state health institution that operates OR MANAGES such structure or building, or an affiliate of such institution, also operates OR MANAGES a health facility within this state, suitable for use as a hospital, clinic, nursing home, home for the aged or infirm, or other health care facility; laboratory; pharmacy; laundry; nurses', doctors', or interns' residences; administration building; research facility; maintenance, storage, or utility facility; auditorium; dining hall; food service and preparation facility; mental or physical health care facility; dental care facility; nursing school; medical or dental teaching facility; mental or physical health facilities related to any such structure or facility; or any other structure or facility required or useful for the operation of a health institution, including but not limited to offices, parking lots and garages, and other supporting service structures; and any equipment, furnishings, appurtenances, or other assets, tangible or intangible, including but not limited to assets related to the medical practice of a health care professional, that are necessary or useful in the development, establishment, or operation of a participating health institution; and the acquisition, preparation, and development of all real and personal property necessary or convenient as a site or sites for any such structure or facility.

(b) "Health facility" or "facility" does not include ~~such items as~~ THE FOLLOWING:

(I) Food, fuel, supplies, or other items ~~which~~ THAT are customarily considered as a current operating expense or charges; and ~~"health facility" or "facility" does not include any~~

(II) Property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship; or ~~any~~

(III) Property used or to be used primarily in connection with any part of a program of a school or department of divinity of any religious denomination.

(7) (a) "Health institution" means ~~any~~ A limited liability company controlled directly or indirectly by one or more nonprofit entities, ~~any~~ A private nonprofit hospital, corporation, association, or institution, or ~~any~~ A public hospital or institution authorized or permitted by law, whether directly or indirectly through one or more affiliates, to provide, ~~or~~ operate, OR MANAGE ONE OR MORE health facilities in this state or outside this state if such entity, or an affiliate of such entity, also operates ~~and is engaged in a financing or refinancing on behalf of~~ OR MANAGES a health facility within this state. ~~and also means any~~

(b) "HEALTH INSTITUTION" ALSO INCLUDES A cooperative hospital service organization, ~~which is~~ AS described in section 501 (e) of the "Internal Revenue Code of 1986", as amended, or ~~any~~ A similar corporation, whether or not such corporation is exempt from federal income taxation pursuant to said section 501 (e).

(c) (I) "Health institution" also includes ~~any~~ A network of health care providers, however organized; ~~any~~ AN integrated health care delivery system; ~~any~~ A joint venture or partnership between or among health care providers; ~~any~~ A health care purchasing alliance; ~~any~~ health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services; ~~any~~ AN organization ~~that, as its~~ WHOSE primary purpose ~~provides~~ IS TO PROVIDE supporting services to one or more health institutions; ~~any~~ OR A health care provider or such other health care-related organization, or an affiliate of such organization, whose regional or national headquarters are located in this state. ~~provided that such~~

(II) IN ORDER TO BE A HEALTH INSTITUTION, A network, system, joint venture, partnership, alliance, provider, or organization ~~is~~ DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) SHALL BE a nonprofit entity or ~~is~~ controlled by one or more nonprofit entities.

(b) ~~"Participating health institution" means a health institution which, pursuant to the provisions of this article, undertakes the financing and construction or acquisition of health facilities or undertakes the refunding or refinancing of outstanding obligations as provided in and permitted by this article.~~

(7.5) "PARTICIPATING HEALTH INSTITUTION" MEANS A HEALTH INSTITUTION THAT UNDERTAKES THE FINANCING AND CONSTRUCTION OR ACQUISITION OF HEALTH FACILITIES OR UNDERTAKES THE REFUNDING OR REFINANCING OF OUTSTANDING OBLIGATIONS IN ACCORDANCE WITH THIS ARTICLE.

SECTION 3. 25-25-105 (1), (2), (3), and (4), Colorado Revised Statutes, are amended to read:

25-25-105. Organization meeting - chair - executive director - surety bond - conflict of interest. (1) A member of the board, designated by the governor, shall call and convene the initial organizational meeting of the board and shall serve as its ~~chairman~~ CHAIR pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The BOARD'S bylaws may provide for the election or appointment of officers, the delegation of certain powers and duties, and such other matters as the authority deems proper. At such meeting and annually thereafter, the board shall elect one of its members as ~~chairman~~ CHAIR and one as ~~vice-chairman~~

VICE-CHAIR. It shall appoint an executive director and, if desired, an associate executive director AND ANY OTHER OFFICER DESIGNATED BY THE BOARD, who shall not be members of the board and who shall serve at its pleasure. They shall receive such compensation for their services as shall be fixed by the board.

(2) The executive director, the associate executive director, or any other person designated by the board shall keep a record of the BOARD'S proceedings ~~thereof~~ and shall be custodian of all books, documents, and papers filed with the board, the minute books or journal, ~~thereof~~, and ~~its~~ THE official seal OF THE AUTHORITY. ~~Said executive director, associate executive director, or other~~ THIS person may ~~cause copies to be made of all~~ MAKE COPIES OF THE minutes and other records and documents of the board and may ~~give certificates~~ CERTIFY under the official seal of the authority ~~to the effect that such copies are true copies.~~ and All persons dealing with the authority may rely on such ~~certificates~~ CERTIFICATIONS.

(3) The board may delegate, by resolution, to one or more of its members or to its executive director, ~~or~~ associate executive director, OR ANY OTHER OFFICER DESIGNATED BY THE BOARD, such powers and duties as it may deem proper.

(4) (a) Before the issuance of any bonds under this article, the executive director, ~~and~~ associate executive director, AND ANY OTHER OFFICER DESIGNATED BY THE BOARD shall each execute a surety bond in the penal sum of one hundred thousand dollars, and each member of the board shall execute a surety bond in the penal sum of fifty thousand dollars. ~~or~~;

(b) In lieu ~~thereof~~ OF THE SURETY BONDS REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (4), the ~~chairman~~ CHAIR of the board ~~shall~~ MAY execute a blanket bond covering each member, the executive director, the associate executive director, and the employees or other officers of the authority.

(c) Each surety bond ~~to~~ SHALL be conditioned upon the faithful performance of the duties of the office or offices covered ~~to~~ AND SHALL be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

SECTION 4. 25-25-106, Colorado Revised Statutes, is amended to read:

25-25-106. Meetings of board - quorum - expenses. (1) Four members of the board shall constitute a quorum for the purpose of conducting business and exercising its powers. Action may be taken by the board upon the affirmative vote of at least four of its members. ~~No~~ A vacancy in the membership of the board shall NOT impair the right of a quorum OF THE BOARD to exercise all the rights and perform all the duties of the board.

(2) Each meeting of the board for any purpose whatsoever shall be open to the public. Notice of meetings shall be as provided in the bylaws of the authority. ~~If a meeting of the board is called for the sole purpose of adopting resolutions authorizing the issuance of bonds, notes, bond anticipation notes, or other obligations by the authority,~~ One or more members of the board may participate in ~~such~~ A meeting OF THE BOARD OR A COMMITTEE OF THE BOARD and may vote on ~~such~~ resolutions PRESENTED AT THE MEETING through the ~~usage~~ USE of

telecommunications devices, including, but not limited to, ~~the usage of~~ a conference telephone or similar communications equipment. ~~Such~~ Participation through telecommunications devices shall constitute presence in person at ~~such~~ THE meeting. ~~Such~~ THE use of telecommunications DEVICES shall not supersede any requirements for public hearing otherwise provided by law. Resolutions need not be published or posted, but resolutions and all proceedings and other acts of the board shall be a public record.

(3) Members of the board shall receive no compensation for services but shall be entitled to the necessary expenses, including traveling and lodging expenses, incurred in the discharge of their official duties. Any payments for ~~compensation and~~ expenses shall be paid from funds of the authority.

SECTION 5. 25-25-107 (1) (m), Colorado Revised Statutes, is amended to read:

25-25-107. General powers of the authority. (1) In addition to any other powers granted to the authority by this article, the authority shall have the following powers:

(m) To make mortgage loans or other secured or unsecured loans to a participating health institution; to refund outstanding obligations, mortgages, or advances issued, made, or given by such institution for the cost of its facilities, including the issuance of bonds and the making of loans to a participating health institution; AND to refinance outstanding obligations and indebtedness incurred for facilities undertaken and completed prior to, on, or after July 1, 1977, when the authority ~~finds that such financing is in the public interest and alleviates the financial hardship upon the participating health institution, is in connection with other financing by the authority for such participating health institution, or may be expected to result in a lesser cost of patient care and a saving to third parties, including the state or the federal government, and to others who must pay for such health care, or any combination thereof~~ MAKES A FINDING CONSISTENT WITH SECTION 25-25-115 (1);

SECTION 6. 25-25-110 (2) and (4), Colorado Revised Statutes, are amended to read:

25-25-110. Bonds. (2) The bonds may be issued as serial bonds, as term bonds, or as a combination of both types. All bonds issued by the authority shall be payable solely out of the revenues and receipts derived from the leasing, mortgaging, or sale by the authority of the facilities concerned or of any part thereof as designated in the resolutions of the authority under which the bonds are authorized to be issued or as designated in a trust indenture authorized by the authority, which trust indenture shall name a bank or trust company in Colorado, or outside of Colorado if it is determined by the authority to be in the best interests of the financing, such determination to be conclusive, as trustee, or out of other moneys available therefor and not otherwise pledged. Such bonds may be ~~executed~~ ISSUED and delivered by the authority at such times AND IN SUCH MANNER, may be in such form and denominations and include such terms and maturities, may be in fully registered form or in bearer form registerable either as to principal or interest or both, may bear such conversion privileges, may be payable in such installments and at such time or times not exceeding forty years ~~from~~ AFTER the date thereof,

may be payable at such place or places whether within or without the state of Colorado, may bear interest at such rate or rates per annum as shall be determined by the authority or as shall be determined by any formula prescribed by the authority or as may be determined from time to time by a designated agent of the authority in accordance with specified standards and procedures and without regard to any interest rate limitation appearing in any other law, may be evidenced in such manner, ~~may be executed by such officers of the authority, including the use of one or more facsimile signatures so long as at least one manual signature appears on the bonds, which manual signature may be either that of an officer of the authority or that of an officer of the trustee authenticating the same;~~ may be in the form of coupon bonds ~~which~~ THAT have attached thereto interest coupons bearing the facsimile signature of an authorized officer of the authority, and may contain such provisions not inconsistent with this article, all as shall be provided in the resolutions of the authority under which the bonds are authorized to be issued or as is provided in a trust indenture authorized by the authority. Notwithstanding anything in this subsection (2) to the contrary, in the case of short-term notes or other obligations maturing not later than one year ~~from~~ AFTER the date of issuance thereof, the board may authorize the executive director, associate executive director, or any officer of the board to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest rates as the board shall prescribe by resolution, and such authorization shall remain effective for the period of time designated in the initial resolution regardless of whether the composition of the board changes in the interim unless sooner rescinded by the board.

(4) The bonds or notes of the authority may be sold at public or private sale for such price or prices, in such manner, and at such times as may be determined by the authority, and the authority may pay all expenses, premiums, and commissions ~~which~~ THAT it may deem necessary or advantageous in connection with the issuance thereof. The power to fix the date of sale of bonds and notes, to receive bids or proposals, to award and sell bonds and notes, and to take all other necessary action to sell and ~~deliver~~ ISSUE bonds and notes may be delegated to the executive director, associate executive director, or any officer of the board of the authority by resolution of the authority. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates, which shall be exchanged for ~~such~~ THE definitive bonds.

SECTION 7. 25-25-115, Colorado Revised Statutes, is amended to read:

25-25-115. Procedure concerning issuance of bonds. (1) Notwithstanding any other provisions of this article, the authority may not undertake any facility authorized by this article unless, prior to the issuance of any bonds or notes, the board finds that ~~such~~ THE facility will enable or assist a health institution to fulfill its obligation to provide health facilities.

(2) ~~The bond resolution relating to any bonds or notes issued by the authority shall provide that no proceeds of any bonds or notes shall be expended for any facility until the participating health institution has provided evidence satisfactory to the authority that, if required by law, such facility has been reviewed and approved by the appropriate regional and state health planning agency and has been~~

granted the appropriate certification by such agency.

SECTION 8. 25-25-116, Colorado Revised Statutes, is amended to read:

25-25-116. Trust agreement to secure bonds. (1) In the discretion of the authority, any bonds issued under this article may be secured by a trust agreement between the authority and a corporate trustee or trustees. ~~which~~ A CORPORATE TRUSTEE may be any trust company or bank ~~having the powers of a trust company~~ in Colorado. ~~Such~~ IF THE AUTHORITY DETERMINES IT TO BE IN THE BEST INTERESTS OF THE FINANCING, A TRUST COMPANY OR BANK OUTSIDE OF COLORADO MAY BE A CORPORATE TRUSTEE. THE trust agreement or the resolution providing for the issuance of ~~such~~ THE bonds may pledge or assign the revenues to be received or the proceeds of any contract or contracts pledged and may convey or mortgage the facilities or any portion ~~thereof~~. ~~Such~~ OF THE FACILITIES. THE trust agreement or resolution providing for the issuance of ~~such~~ THE bonds may contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders ~~as may be~~ THAT ARE reasonable, proper, and not in violation of law, including ~~particularly such~~ provisions ~~as~~ THAT have been specifically authorized to be included in any resolution or resolutions of the authority authorizing THE bonds. ~~thereof~~.

(2) Any bank or trust company incorporated under the laws of this state ~~which~~ THAT may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the authority. ~~Any such~~ A trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, ~~any such~~ THE trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of a facility.

SECTION 9. The introductory portion to 25-25-120 (2) and 25-25-120 (2) (a), (2) (b), and (3), Colorado Revised Statutes, are amended to read:

25-25-120. Fees. (2) An initial planning service fee in an amount determined by the authority shall be paid to the authority by each health institution that applies for financial assistance to provide for its facilities. Such initial planning service fees shall be included in the cost of the facilities to be financed and shall not be refundable by the authority, whether or not any such application is approved, or, if approved, whether or not such financial assistance is accomplished. In addition to such initial fee, an annual planning service fee shall be paid to the authority by each participating health institution in an amount determined by the authority. Such fees shall be paid on ~~said~~ dates or in installments as may be satisfactory to the authority. Such fees may be used for:

(a) ~~Necessary expenses to determine the need of facilities in the area concerned; and, to that end, the authority may utilize recognized voluntary and official health planning organizations and agencies at local, regional, and state levels as well as the state agencies having health planning responsibilities;~~

(b) Necessary administrative AND OPERATING expenses; and

(3) In addition, the authority may ~~for a negotiated fee~~; retain the services of any other public or private person, firm, partnership, association, or corporation ~~for the furnishing of~~ TO FURNISH services and data ~~for use~~ TO BE USED by the authority in determining the ~~need and location~~ FINANCIAL FEASIBILITY of any ~~such~~ facilities for which application is being made or for such other services or surveys as the authority deems necessary to carry out the purposes of this article. THE AUTHORITY MAY NEGOTIATE THE FEE TO BE PAID TO A PERSON OR ENTITY THAT PROVIDES THESE SERVICES TO THE AUTHORITY.

SECTION 10. 25-25-122, Colorado Revised Statutes, is amended to read:

25-25-122. Investment of funds. (1) The authority may invest the proceeds from the sale of a series of bonds or any funds related to the series in ~~such~~ securities and other investments ~~whether or not any such investment or reinvestment is authorized under any other law of this state~~; as may be provided in the proceedings under which the series of bonds are authorized to be issued, ~~including but~~ WHETHER OR NOT THE INVESTMENT OR REINVESTMENT IS AUTHORIZED UNDER ANY OTHER PROVISION OF LAW. SUCH INVESTMENT OR REINVESTMENT MAY INCLUDE, BUT IS not limited to, the following:

(a) Bonds or other obligations of the United States;

(b) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(c) Obligations issued or guaranteed as to principal and interest by any agency or person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress of the United States;

(d) Obligations issued or guaranteed by any state of the United States or any political subdivision of any such state;

(e) Prime commercial paper;

(f) Prime finance company paper;

(g) Bankers acceptances drawn on and accepted by commercial banks;

(h) Repurchase agreements fully secured by obligations issued or guaranteed as to principal and interest by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by THE congress of the United States; ~~or~~

(i) Certificates of deposit or time deposits issued by commercial banks or savings and loan associations that are insured by the federal deposit insurance corporation or its successor; OR

(j) SUCH OTHER SECURITIES AND INVESTMENTS AS MAY BE AUTHORIZED BY RESOLUTION OF THE BOARD IF SUCH SECURITIES AND INVESTMENTS ARE RATED

WITHIN ONE OF THE THREE HIGHEST RATING CATEGORIES BY A NATIONALLY RECOGNIZED RATING AGENCY.

(2) The authority may invest any other funds in the securities as provided in this section and with such maturities as the authority shall determine if such maturities are on a date or dates prior to the time that, in the judgment of the authority, the funds so invested will be required for expenditure. The express judgment of the authority as to the time that any funds will be required for expenditure or be redeemable is final and conclusive.

SECTION 11. 25-25-127, Colorado Revised Statutes, is amended to read:

25-25-127. Account of activities - receipts for expenditures - report - audit.

(1) The authority shall keep an accurate account of ~~all~~ its activities, ~~and of all its~~ receipts, and expenditures and shall annually ~~in the month of January,~~ make a report ~~thereof~~ OF ITS ACTIVITIES, RECEIPTS, AND EXPENDITURES to ~~its members,~~ to THE BOARD, the governor, and to the state auditor. ~~such reports to~~ THE REPORT SHALL BE SUBMITTED WITHIN SIX MONTHS AFTER THE CLOSE OF THE AUTHORITY'S FISCAL YEAR AND SHALL be in a form prescribed ~~thereby~~ BY THE RECIPIENTS OF THE REPORT.

(2) The state auditor may investigate the affairs of the authority, ~~may~~ severally examine the properties and records of the authority, and ~~may~~ prescribe methods of accounting and the rendering of periodical reports in relation to facilities undertaken by the authority. This article and the expenditures of the authority shall be reviewed by the legislative audit committee every ~~two years, commencing July 1, 1979~~ ODD-NUMBERED YEAR.

SECTION 12. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 8, 2007, if adjournment sine die is on May 9, 2007); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 9, 2007