

CHAPTER 110

EDUCATION - UNIVERSITIES AND COLLEGES

HOUSE BILL 08-1002

BY REPRESENTATIVE(S) King, Buescher, Benefield, Curry, Garza-Hicks, McFadyen, Merrifield, Todd, Labuda, Rose, Stephens, and Summers;
also SENATOR(S) Bacon, Penry, Gibbs, Kopp, Spence, Tapia, Wiens, and Williams.

AN ACT

CONCERNING THE AUTHORITY OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION TO INVEST MONEYS.

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

SECTION 1. 23-53-102 (1) (b), Colorado Revised Statutes, is amended to read:

23-53-102. Board of trustees - creation - members - powers - duties.

(1) (b) The board of trustees and its successors shall have perpetual succession, shall have a seal, may make bylaws and regulations for the well-ordering and governance of Mesa state college, and may conduct the business of the college in a manner not repugnant to the constitution and laws of this state. The board of trustees shall elect from the appointed members a chairperson, whose duties and responsibilities shall be prescribed in the duly adopted bylaws of the board of trustees. The board of trustees shall also elect a secretary and a treasurer, who ~~are not~~ MAY BE members of the board and whose duties and responsibilities shall be prescribed in the duly adopted bylaws of the board of trustees. The staff of Mesa state college shall provide staff support for the board of trustees.

SECTION 2. 23-53-103 (1), Colorado Revised Statutes, is amended, and the said 23-53-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-53-103. Board of trustees for Mesa state college fund - creation - control - use. (1) There is created in the state treasury the board of trustees for Mesa state college fund, referred to in this section as the "fund", which shall be under the control of and administered by the board of trustees in accordance with the provisions of this article. ~~Except as otherwise allowed by state law, including but~~

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

~~not limited to section 24-36-103 (2), C.R.S., all~~ THE BOARD OF TRUSTEES SHALL HAVE AUTHORITY AND RESPONSIBILITY FOR ALL MONEYS OF THE BOARD OF TRUSTEES AND OF MESA STATE COLLEGE. THE BOARD OF TRUSTEES SHALL DESIGNATE, PURSUANT TO ITS STATUTORY AUTHORITY, THOSE moneys received or acquired by the board of trustees or by Mesa state college, ~~shall be deposited in the fund~~; whether received by appropriation, grant, contract, or gift or by sale or lease of surplus real or personal property or by any other means, whose disposition is not otherwise provided for by law, THAT SHALL BE CREDITED TO THE FUND. All interest and income derived from the deposit and investment of moneys in the fund shall be credited to the fund. The moneys in the fund are hereby continuously appropriated to the board of trustees and shall remain in the fund UNDER THE CONTROL OF THE BOARD OF TRUSTEES and shall not be transferred or revert to the general fund of the state at the end of a fiscal year.

(4) IF THE BOARD OF TRUSTEES VOTES TO INVEST MESA STATE COLLEGE'S ASSETS PURSUANT TO SECTIONS 23-53-103.3 AND 23-53-103.4, THE BOARD SHALL ESTABLISH AN INVESTMENT ADVISORY COMMITTEE CONSISTING OF AT LEAST FIVE MEMBERS TO MAKE RECOMMENDATIONS TO THE BOARD REGARDING INVESTMENTS. THE INVESTMENT ADVISORY COMMITTEE, AT A MINIMUM, SHALL INCLUDE THE MESA STATE COLLEGE TREASURER, A MEMBER OF THE BOARD, AND THREE REPRESENTATIVES FROM THE FINANCIAL COMMUNITY.

SECTION 3. Article 53 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

23-53-103.3. Investments in consolidated funds. UNLESS OTHERWISE RESTRAINED BY THE TERMS OF A WILL, TRUST AGREEMENT, OR OTHER INSTRUMENT OF GIFT, THE BOARD OF TRUSTEES IS AUTHORIZED TO HOLD INVESTMENTS IN ONE OR MORE CONSOLIDATED INVESTMENT FUNDS IN WHICH THE PARTICIPATING TRUSTS OR ACCOUNTS HAVE UNDIVIDED INTERESTS.

23-53-103.4. Corporate stock in name of nominee authorized. (1) IN ORDER TO FACILITATE THE INVESTMENT, REINVESTMENT, SALE, AND DISPOSITION OF CORPORATE STOCKS, THE BOARD OF TRUSTEES IS AUTHORIZED TO HOLD CERTIFICATES OF STOCK IN THE NAME OF A NOMINEE OF ITS SELECTION WITHOUT DISCLOSING THE FACT THAT THE CERTIFICATES ARE HELD BY THE BOARD OF TRUSTEES OR ARE HELD IN A FIDUCIARY CAPACITY IF:

(a) THE RECORDS OF THE BOARD AND ALL REPORTS OR ACCOUNTS RENDERED BY IT CLEARLY SHOW THE OWNERSHIP OF THE STOCK BY THE BOARD AND THE FACTS REGARDING THE BOARD'S HOLDING; AND

(b) THE NOMINEE DEPOSITS WITH THE BOARD A SIGNED STATEMENT SHOWING THE TRUST OWNERSHIP, ENDORSES THE STOCK CERTIFICATE IN BLANK, AND DOES NOT HAVE POSSESSION OF OR ACCESS TO THE STOCK CERTIFICATE EXCEPT UNDER THE IMMEDIATE SUPERVISION OF THE TREASURER OF MESA STATE COLLEGE OR ANOTHER PERSON THAT THE BOARD OF TRUSTEES HAS DESIGNATED.

(2) THE BOARD OF TRUSTEES SHALL MAINTAIN A LIST OF CERTIFICATES OF STOCK HELD IN THE NAMES OF NOMINEES PURSUANT TO THIS SECTION AND SHALL MAKE THE LIST AVAILABLE FOR PUBLIC INSPECTION DURING NORMAL BUSINESS HOURS.

(3) THE BOARD OF TRUSTEES SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY AT EACH REGULAR SESSION REGARDING THE INVESTMENTS MADE AND THE EARNINGS OR LOSSES DERIVED THEREFROM UNDER THE PROVISIONS OF THIS SECTION AND SECTION 23-53-103.3. THE REPORT SHALL INCLUDE INFORMATION INDICATING THE EXTENT TO WHICH THE INVESTMENT MANAGERS HIRED BY THE BOARD OF TRUSTEES HAVE ACHIEVED OR FAILED TO ACHIEVE THE PERFORMANCE BENCHMARKS ESTABLISHED PURSUANT TO SECTION 23-53-103.6 (1) (b).

23-53-103.6. Investment policy - fiduciary responsibility. (1) IF THE BOARD OF TRUSTEES VOTES TO INVEST MESA STATE COLLEGE'S ASSETS PURSUANT TO SECTIONS 23-53-103.3 AND 23-53-103.4, THEN THE BOARD OF TRUSTEES SHALL DEVELOP AND ANNUALLY REVIEW A WRITTEN INVESTMENT POLICY FOR MESA STATE COLLEGE, WHICH POLICY SHALL INCLUDE:

(a) AN ACKNOWLEDGMENT BY THE BOARD OF TRUSTEES OF THE BOARD'S FIDUCIARY RESPONSIBILITY WITH RESPECT TO OVERSIGHT OF THE INVESTMENT POLICY OF MESA STATE COLLEGE; AND

(b) THE ESTABLISHMENT OF PERFORMANCE BENCHMARKS FOR EACH INVESTMENT MANAGER HIRED BY THE BOARD OF TRUSTEES PURSUANT TO SECTIONS 23-53-103.3 AND 23-53-103.4.

(2) IN SELECTING INVESTMENT MANAGERS FOR THE PURPOSES OF THIS SECTION, THE BOARD OF TRUSTEES SHALL USE AN OPEN AND COMPETITIVE PROCESS.

(3) IF THE BOARD OF TRUSTEES VOTES TO INVEST MONEYS PURSUANT TO SECTIONS 23-53-103.3 AND 23-53-103.4, THE BOARD SHALL REQUIRE ANNUAL FINANCIAL STATEMENTS TO BE SUBMITTED TO THE BOARD OF TRUSTEES, THE STATE TREASURER, THE STATE AUDITOR, AND THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY. THE FINANCIAL STATEMENTS SHALL INCLUDE, AT A MINIMUM, INFORMATION CONCERNING INVESTMENT INCOME, GAINS, AND LOSSES, IF ANY, OF MESA STATE COLLEGE. THE FINANCIAL STATEMENTS SHALL REPORT THE PERFORMANCE OF INVESTMENTS ON BOTH A GROSS-OF-FEE AND A NET-OF-FEE BASIS.

(4) IF THE BOARD OF TRUSTEES VOTES TO INVEST MONEYS PURSUANT TO SECTIONS 23-53-103.3 AND 23-53-103.4, THE BOARD SHALL ENSURE THAT, AT ALL TIMES, LIQUID INVESTMENT ASSETS REMAIN AT A LEVEL SUFFICIENT TO PAY FOR ALL BUDGETED, OUTSTANDING OPERATIONAL OBLIGATIONS AND EXPENSES OCCURRING WITHIN THE CURRENT FISCAL YEAR.

(5) MESA STATE COLLEGE SHALL NOT REQUEST FROM THE GENERAL ASSEMBLY ANY GENERAL FUND APPROPRIATIONS TO REPLACE ANY LOSSES INCURRED DUE TO INVESTMENT ACTIVITIES CONDUCTED BY THE BOARD OF TRUSTEES PURSUANT TO SECTIONS 23-53-103.3 AND 23-53-103.4.

SECTION 4. 23-30-105 (2), Colorado Revised Statutes, is repealed.

SECTION 5. 23-30-106 (1), Colorado Revised Statutes, is amended, and the said 23-30-106 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-30-106. Board of governors of the Colorado state university system fund - creation - control - use. (1) There is hereby created in the state treasury the board of governors of the Colorado state university system fund which shall be under the control of and administered by the board of governors of the Colorado state university system in accordance with the provisions of this article. ~~Except as otherwise allowed by section 24-36-103 (2), C.R.S., all~~ THE BOARD OF GOVERNORS SHALL HAVE AUTHORITY AND RESPONSIBILITY FOR ALL MONEYS OF THE BOARD OF GOVERNORS AND ANY ENTITY GOVERNED BY IT. THE BOARD OF GOVERNORS SHALL DESIGNATE, PURSUANT TO ITS STATUTORY AUTHORITY, THOSE moneys received or acquired by the board of governors of the Colorado state university system or any of the entities it governs, whether by appropriation, grant, contract, or gift, by sale or lease of surplus real or personal property, or by any other means, whose disposition is not otherwise provided for by law, ~~and~~ THAT SHALL BE CREDITED TO THE FUND. All interest derived from the deposit and investment of moneys in the fund shall be credited to the fund. The moneys in the fund are hereby continuously appropriated to the board of governors of the Colorado state university system and shall remain in the fund UNDER THE CONTROL OF THE BOARD OF GOVERNORS and shall not be transferred or revert to the general fund of the state at the end of any fiscal year.

(4) IF THE BOARD OF GOVERNORS VOTES TO INVEST MONEYS PURSUANT TO SECTIONS 23-30-121 AND 23-30-122, THE BOARD OF GOVERNORS SHALL ESTABLISH AN INVESTMENT ADVISORY COMMITTEE CONSISTING OF AT LEAST FIVE MEMBERS TO MAKE RECOMMENDATIONS TO THE BOARD OF GOVERNORS REGARDING INVESTMENTS. THE INVESTMENT ADVISORY COMMITTEE SHALL INCLUDE, AT A MINIMUM, THE TREASURER OF THE COLORADO STATE UNIVERSITY SYSTEM, A MEMBER OF THE BOARD OF GOVERNORS, AND THREE REPRESENTATIVES OF THE FINANCIAL COMMUNITY.

SECTION 6. Article 30 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

23-30-121. Investments in consolidated funds. UNLESS OTHERWISE RESTRAINED BY THE TERMS OF A WILL, TRUST AGREEMENT, OR OTHER INSTRUMENT OF GIFT, THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM MAY HOLD INVESTMENTS IN ONE OR MORE CONSOLIDATED INVESTMENT FUNDS IN WHICH THE PARTICIPATING TRUSTS OR ACCOUNTS HAVE UNDIVIDED INTERESTS.

23-30-122. Corporate stock in nominee authorized. (1) IN ORDER TO FACILITATE THE INVESTMENT, REINVESTMENT, SALE, AND DISPOSITION OF CORPORATE STOCKS, THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM , REFERRED TO IN THIS SECTION AS THE "BOARD", IS AUTHORIZED TO HOLD CERTIFICATES OF STOCK IN THE NAME OF A NOMINEE OF ITS SELECTION WITHOUT DISCLOSING THE FACT THAT THE CERTIFICATES ARE HELD BY THE BOARD OR ARE HELD IN A FIDUCIARY CAPACITY IF:

(a) THE RECORDS OF THE BOARD AND ALL REPORTS OR ACCOUNTS RENDERED BY IT CLEARLY SHOW THE OWNERSHIP OF THE STOCK BY THE BOARD AND THE FACTS REGARDING THE BOARD'S HOLDINGS; AND

(b) THE NOMINEE DEPOSITS WITH THE BOARD A SIGNED STATEMENT SHOWING THE

TRUST OWNERSHIP, ENDORSES THE STOCK CERTIFICATE IN BLANK, AND DOES NOT HAVE POSSESSION OF OR ACCESS TO THE STOCK CERTIFICATE EXCEPT UNDER THE IMMEDIATE SUPERVISION OF THE TREASURER OF THE COLORADO STATE UNIVERSITY SYSTEM OR ANOTHER PERSON THAT THE BOARD HAS DESIGNATED.

(2) THE BOARD SHALL MAINTAIN A LIST OF CERTIFICATES OF STOCK HELD IN THE NAMES OF NOMINEES PURSUANT TO THIS SECTION AND SHALL MAKE THE LIST AVAILABLE FOR PUBLIC INSPECTION DURING NORMAL BUSINESS HOURS.

(3) THE BOARD SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY AT EACH REGULAR SESSION REGARDING THE INVESTMENTS MADE AND THE EARNINGS OR LOSSES DERIVED THEREFROM UNDER THE PROVISIONS OF THIS SECTION AND SECTION 23-30-121. THE REPORT SHALL INCLUDE INFORMATION INDICATING THE EXTENT TO WHICH THE INVESTMENT MANAGERS HIRED BY THE BOARD HAVE ACHIEVED OR FAILED TO ACHIEVE THE PERFORMANCE BENCHMARKS ESTABLISHED PURSUANT TO SECTION 23-30-123 (1) (b).

23-30-123. Investment policy - fiduciary responsibility. (1) IF THE BOARD OF GOVERNORS VOTES TO INVEST ASSETS OF THE COLORADO STATE UNIVERSITY SYSTEM PURSUANT TO SECTIONS 23-30-121 AND 23-30-122, THE BOARD SHALL DEVELOP AND ANNUALLY REVIEW A WRITTEN INVESTMENT POLICY FOR THE COLORADO STATE UNIVERSITY SYSTEM, WHICH POLICY SHALL INCLUDE:

(a) AN ACKNOWLEDGMENT BY THE BOARD OF GOVERNORS OF THE BOARD'S FIDUCIARY RESPONSIBILITY WITH RESPECT TO OVERSIGHT OF THE INVESTMENT POLICY OF THE SYSTEM; AND

(b) THE ESTABLISHMENT OF PERFORMANCE BENCHMARKS FOR EACH INVESTMENT MANAGER HIRED BY THE BOARD OF GOVERNORS PURSUANT TO SECTIONS 23-30-121 AND 23-30-122.

(2) IN SELECTING INVESTMENT MANAGERS FOR THE PURPOSES OF THIS SECTION, THE BOARD OF GOVERNORS SHALL USE AN OPEN AND COMPETITIVE PROCESS.

(3) IF THE BOARD OF GOVERNORS VOTES TO INVEST ASSETS OF THE COLORADO STATE UNIVERSITY SYSTEM PURSUANT TO SECTIONS 23-30-121 AND 23-30-122, THE BOARD SHALL REQUIRE ANNUAL FINANCIAL STATEMENTS TO BE SUBMITTED TO THE BOARD OF GOVERNORS, THE STATE TREASURER, THE STATE AUDITOR, AND THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY. THE FINANCIAL STATEMENTS SHALL INCLUDE, AT A MINIMUM, INFORMATION CONCERNING INVESTMENT INCOME, GAINS, AND LOSSES, IF ANY, OF THE COLORADO STATE UNIVERSITY SYSTEM. THE FINANCIAL STATEMENTS SHALL REPORT THE PERFORMANCE OF INVESTMENTS ON BOTH A GROSS-OF-FEE AND A NET-OF-FEE BASIS.

(4) IF THE BOARD OF GOVERNORS VOTES TO INVEST MONEYS PURSUANT TO SECTIONS 23-20-121 AND 23-20-122, THE BOARD:

(a) SHALL ENSURE THAT, AT ALL TIMES, LIQUID INVESTMENT ASSETS REMAIN AT A LEVEL SUFFICIENT TO PAY FOR ALL BUDGETED, OUTSTANDING OPERATIONAL OBLIGATIONS AND EXPENSES OCCURRING WITHIN THE CURRENT FISCAL YEAR; AND

(b) SHALL NOT USE MONEYS INVESTED IN THE WILDFIRE EMERGENCY RESPONSE FUND CREATED IN SECTION 23-31-309 (1) OR THE WILDFIRE PREPAREDNESS FUND CREATED IN SECTION 23-31-309 (4) FOR ANY ACADEMIC OR INSTITUTIONAL OBLIGATIONS. FOR THE PURPOSES OF PARAGRAPH (a) OF THIS SUBSECTION (4), THE BOARD SHALL CONSIDER THESE FUNDS TO BE OUTSTANDING OPERATIONAL OBLIGATIONS.

(5) THE COLORADO STATE UNIVERSITY SYSTEM SHALL NOT REQUEST FROM THE GENERAL ASSEMBLY ANY GENERAL FUND APPROPRIATIONS TO REPLACE ANY LOSSES INCURRED DUE TO INVESTMENT ACTIVITIES CONDUCTED BY THE BOARD OF GOVERNORS PURSUANT TO SECTIONS 23-30-121 AND 23-30-122.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 10, 2008