

CHAPTER 260

EDUCATION - POSTSECONDARY

HOUSE BILL 13-1297

BY REPRESENTATIVE(S) McLachlan and Schafer, Gerou, Fields, Ginal, Kraft-Tharp, Labuda, Mitsch Bush, Rosenthal, Salazar, Young;
also SENATOR(S) Roberts and Nicholson, Crowder, Todd.

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. In Colorado Revised Statutes, 23-41-103.5, **amend** (1); and **add** (4) as follows:

23-41-103.5. The Colorado school of mines fund - creation - control - use.

(1) There is hereby created in the state treasury the Colorado school of mines fund which shall be under the control of AND ADMINISTERED BY the board of trustees of the Colorado school of mines in accordance with the provisions of this article. ~~and any moneys in said fund shall be invested by the state treasurer's office. Except as otherwise allowed by 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 COLORADO SCHOOL OF MINES. THE BOARD OF TRUSTEES SHALL DESIGNATE, PURSUANT TO ITS CONSTITUTIONAL AND STATUTORY AUTHORITY, THOSE moneys received or acquired by the board of trustees or by the Colorado school of mines, 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 all interest derived from the deposit and investment of moneys in the fund shall be credited to the fund~~ THAT SHALL BE CREDITED TO THE FUND. ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND MUST 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 any fiscal year.

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

(4) IF THE BOARD OF TRUSTEES VOTES TO INVEST COLORADO SCHOOL OF MINES ASSETS PURSUANT TO SECTIONS 23-41-103.6 AND 23-41-103.7, 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 MAY INCLUDE THE TREASURER OF THE BOARD AND UP TO THREE REPRESENTATIVES FROM THE FINANCIAL COMMUNITY.

SECTION 2. In Colorado Revised Statutes, **add** 23-41-103.6, 23-41-103.7, and 23-41-103.8 as follows:

23-41-103.6. Investments in consolidated funds. UNLESS OTHERWISE RESTRAINED BY THE TERMS OF A WILL, TRUST AGREEMENT, OR OTHER INSTRUMENT OF GIFT, THE BOARD OF TRUSTEES MAY HOLD INVESTMENTS IN ONE OR MORE CONSOLIDATED INVESTMENT FUNDS IN WHICH THE PARTICIPATING TRUSTS OR ACCOUNTS HAVE UNDIVIDED INTERESTS. TO THE EXTENT PERMITTED BY LAW, THE BOARD MAY ALSO TRANSFER MONEY FOR INVESTMENT IN CONSOLIDATED FUNDS HELD BY A RELATED ENTITY SO LONG AS THE INVESTMENTS ARE SEPARATELY ACCOUNTED FOR.

23-41-103.7. 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 MAY 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 OF TRUSTEES 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 OF TRUSTEES 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 COLORADO SCHOOL OF MINES 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, BEGINNING AFTER THE EFFECTIVE DATE OF THIS SECTION, REGARDING THE INVESTMENTS MADE AND THE EARNINGS OR LOSSES DERIVED THEREFROM UNDER THE PROVISIONS OF THIS SECTION AND SECTION 23-41-103.6. THE REPORT MUST 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 23-41-103.8 (1) (b).

23-41-103.8. Investment policy - fiduciary responsibility. (1) IF THE BOARD OF TRUSTEES VOTES TO INVEST COLORADO SCHOOL OF MINES ASSETS PURSUANT TO

SECTIONS 23-41-103.6 AND 23-41-103.7, THEN THE BOARD OF TRUSTEES SHALL DEVELOP AND ANNUALLY REVIEW A WRITTEN INVESTMENT POLICY FOR COLORADO SCHOOL OF MINES, 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 COLORADO SCHOOL OF MINES; AND

(b) THE ESTABLISHMENT OF PERFORMANCE BENCHMARKS FOR EACH INVESTMENT MANAGER HIRED BY THE BOARD OF TRUSTEES PURSUANT TO SECTIONS 23-41-103.6 AND 23-41-103.7.

(2) IF THE BOARD OF TRUSTEES VOTES TO INVEST MONEYS PURSUANT TO SECTIONS 23-41-103.6 AND 23-41-103.7, 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 MUST INCLUDE, AT A MINIMUM, INFORMATION CONCERNING INVESTMENT INCOME, GAINS, AND LOSSES, IF ANY, OF COLORADO SCHOOL OF MINES. THE FINANCIAL STATEMENTS MUST REPORT THE PERFORMANCE OF INVESTMENTS ON BOTH A GROSS-OF-FEE AND A NET-OF-FEE BASIS.

(3) IF THE BOARD OF TRUSTEES VOTES TO INVEST MONEYS PURSUANT TO SECTIONS 23-41-103.6 AND 23-41-103.7, 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.

(4) COLORADO SCHOOL OF MINES 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 23-41-103.6 AND 23-41-103.7.

SECTION 3. In Colorado Revised Statutes, amend 23-41-123 as follows:

23-41-123. Moneys from Colorado school of mines lands. All moneys that arise from the sale of lands ~~acquired other than by appropriation~~, belonging to the Colorado school of mines, or from the leasing of lands belonging to the said school, or from interest arising on the investment of such funds ~~shall be deposited in the Colorado school of mines fund created in section 23-41-103.5 and~~ are placed under the exclusive control of the board of trustees of the ~~said~~ COLORADO school OF MINES. The state treasurer is instructed to turn over to the ~~said~~ BOARD OF trustees all the moneys, warrants, bonds, and other securities of any nature that have come from the sale of said lands belonging to said school.

SECTION 4. In Colorado Revised Statutes, 23-52-103, amend (1); and add (4) as follows:

23-52-103. Board of trustees for Fort Lewis college fund - creation - control - use. (1) Effective September 1, 2002, there is created in the state treasury the board of trustees for Fort Lewis 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 not limited to section 24-36-103 (2), C.R.S., all~~ THE BOARD OF TRUSTEES HAS AUTHORITY AND RESPONSIBILITY FOR ALL MONEYS OF THE BOARD OF TRUSTEES AND OF FORT LEWIS COLLEGE. THE BOARD OF TRUSTEES SHALL DESIGNATE, PURSUANT TO ITS STATUTORY AUTHORITY, THOSE MONEYS RECEIVED OR ACQUIRED BY THE BOARD OF TRUSTEES OR BY FORT LEWIS 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 MAY 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 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 any fiscal year.

(4) IF THE BOARD OF TRUSTEES VOTES TO INVEST FORT LEWIS COLLEGE'S ASSETS PURSUANT TO SECTIONS 23-52-103.3 AND 23-52-103.4, 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 FORT LEWIS COLLEGE TREASURER, A MEMBER OF THE BOARD, AND THREE REPRESENTATIVES FROM THE FINANCIAL COMMUNITY.

SECTION 5. In Colorado Revised Statutes, **add** 23-52-103.3, 23-52-103.4, and 23-52-103.5 as follows:

23-52-103.3. Investments in consolidated funds. UNLESS OTHERWISE RESTRAINED BY THE TERMS OF A WILL, TRUST AGREEMENT, OR OTHER INSTRUMENT OF GIFT, THE BOARD OF TRUSTEES MAY HOLD INVESTMENTS IN ONE OR MORE CONSOLIDATED INVESTMENT FUNDS IN WHICH THE PARTICIPATING TRUSTS OR ACCOUNTS HAVE UNDIVIDED INTERESTS.

23-52-103.4. 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 MAY 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 OF TRUSTEES 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 OF TRUSTEES 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 FORT LEWIS 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, BEGINNING AFTER THE EFFECTIVE DATE OF THIS SECTION, REGARDING THE INVESTMENTS MADE AND THE EARNINGS OR LOSSES DERIVED THEREFROM UNDER THE PROVISIONS OF THIS SECTION AND SECTION 23-52-103.3. THE REPORT MUST 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 23-52-103.5 (1) (b).

23-52-103.5. Investment policy - fiduciary responsibility. (1) IF THE BOARD OF TRUSTEES VOTES TO INVEST FORT LEWIS COLLEGE'S ASSETS PURSUANT TO SECTIONS 23-52-103.3 AND 23-52-103.4, THEN THE BOARD OF TRUSTEES SHALL DEVELOP AND ANNUALLY REVIEW A WRITTEN INVESTMENT POLICY FOR FORT LEWIS COLLEGE, WHICH POLICY MUST INCLUDE:

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

(b) THE ESTABLISHMENT OF PERFORMANCE BENCHMARKS FOR EACH INVESTMENT MANAGER HIRED BY THE BOARD OF TRUSTEES PURSUANT TO SECTIONS 23-52-103.3 AND 23-52-103.4.

(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 23-52-103.3 AND 23-52-103.4, 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 MUST INCLUDE, AT A MINIMUM, INFORMATION CONCERNING INVESTMENT INCOME, GAINS, AND LOSSES, IF ANY, OF FORT LEWIS COLLEGE. THE FINANCIAL STATEMENTS MUST 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 23-52-103.3 AND 23-52-103.4, 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) FORT LEWIS 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 23-52-103.3 AND 23-52-103.4.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on

May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 23, 2013