COLORADO DEPARTMENT OF THE TREASURY

OPPOSE: SB26-180 | Fact Sheet

SB26-180 creates the Investment Performance Authority (IPA), a special purpose authority designed to bypass existing constitutional and statutory safeguards for public funds. By engaging in speculative investing strategies, **the bill puts public funds at risk and undermines the state's fundamental duty to protect those funds** from private market volatility.

This is an old idea wrapped in new packaging—and **one that the legislature soundly rejected in 2025**. Anticipating renewed legislation, the State Treasurer proactively requested an Attorney General's Opinion concerning the proper investment of public funds. The current bill is being rushed through now in the session's final days.

Constitutional & Legal Violations

The bill authorizes the IPA to invest in stocks, private equity, and real estate investments (REITs) that the Colorado Constitution explicitly prohibits.

- **Direct Violation of Article XI, Section 2:** The Colorado Constitution prohibits the state and its subdivisions from being "a subscriber to, or shareholder in any corporation or company or a joint owner with any person, company, or corporation, public or private..."
- **Attorney General Opinion No. 26-001:** Issued on April 13, 2026, the formal opinion of the Attorney General confirmed that the proposed investments would be unconstitutional and illegal. Moving funds to a special purpose authority would not change the fact that they are public dollars subject to Article XI.

Flawed Investment Logic

The bill incorrectly treats liquid reserves, such as FAMLI benefits, as long-term investments, ignoring that these funds must remain safe and available for use. Locking this money into **volatile private markets creates a dangerous mismatch** that risks the state's ability to pay out benefits when needed.

Furthermore, investment returns will first have to pay expensive fund managers and the IPA's own overhead before a single cent reaches childcare providers. **This high-risk gamble is unnecessary**, as state portfolios already deliver consistent, reliable returns.

Key Risks of the New Authority

- **No Risk Mitigation:** The bill fails to acknowledge the increased risk to state funds and contains **no provisions** for handling portfolio losses, nor defines acceptable risk thresholds for high-volatility assets.
- **Opportunity Costs:** Pulling funds from the TPOOL reduces the pool's size, diminishing returns available for all remaining state programs. If all eligible enterprises joined the new authority, the TPOOL would lose at least $940 million in income over the next decade.
- **Circumvention of Law:** Section 24-118-105(4) allows the IPA to ignore the Prudent Investor Rule and other state laws that currently protect taxpayer dollars.
- **Puts Public Programs at Risk:** Enterprise funds like FAMLI could sustain losses that would put desperately-needed programs in jeopardy.

Accountability and Oversight Gaps

By bypassing the State Treasurer's proven management and flouting the Colorado Constitution, the bill creates a high-risk entity with the power to lose public money without consequence or legal standing.

- **Procurement Exemptions:** The IPA is exempt from the Colorado Procurement Code, allowing for non-competitive contracts with investment firms. This practice departs from other state portfolios, which hold open and transparent bidding processes to select fund managers. Operating outside these norms erodes public accountability and grants outsize authority to a private financial institution and a politically-appointed board.
- **Vague Repayments:** The bill allows the IPA to "borrow" startup funds from existing state fee revenue with only a "reasonable time" requirement for repayment (Section 24-118-108).
- **Conflicts of Interest:** The bill offers no details on the standards and expertise required for board members and fund managers, nor how the authority will avoid conflicts of interest.