

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 08-0502.01 Richard Sweetman

HOUSE BILL 08-1002

HOUSE SPONSORSHIP

King, and Buescher

SENATE SPONSORSHIP

Bacon, and Penry

House Committees

Education
Appropriations

Senate Committees

Education

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Allows the secretary and treasurer of Mesa state college to also be members of the board of trustees of Mesa state college ("Mesa state board"). Allows the Mesa state board to invest the assets of the college. Requires the Mesa state board to establish an investment advisory committee and a written investment policy if the board elects to invest the assets of the college. Under certain conditions, authorizes the Mesa state board to hold certificates of stock in the name of a selected nominee

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
March 24, 2008

SENATE
Amended 2nd Reading
March 20, 2008

HOUSE
3rd Reading Unamended
February 27, 2008

HOUSE
Amended 2nd Reading
February 26, 2008

without disclosing the fact that the certificates are held by the Mesa state board or are held in a fiduciary capacity.

Grants to the board of governors of the Colorado state university system ("CSU board") exclusive control and direction of all funds of and appropriations to its institutions. Requires the CSU board to establish an investment advisory committee and a written investment policy if the board elects to invest the assets of the Colorado state university system. Under certain conditions, authorizes the CSU board to hold certificates of stock in the name of a selected nominee without disclosing the fact that the certificates are held by the CSU board or are held in a fiduciary capacity.

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

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

4 **23-53-102. Board of trustees - creation - members - powers -**
5 **duties.** (1) (b) The board of trustees and its successors shall have
6 perpetual succession, shall have a seal, may make bylaws and regulations
7 for the well-ordering and governance of Mesa state college, and may
8 conduct the business of the college in a manner not repugnant to the
9 constitution and laws of this state. The board of trustees shall elect from
10 the appointed members a chairperson, whose duties and responsibilities
11 shall be prescribed in the duly adopted bylaws of the board of trustees.
12 The board of trustees shall also elect a secretary and a treasurer, who ~~are~~
13 ~~not~~ MAY BE members of the board and whose duties and responsibilities
14 shall be prescribed in the duly adopted bylaws of the board of trustees.
15 The staff of Mesa state college shall provide staff support for the board
16 of trustees.

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

1 **23-53-103. Board of trustees for Mesa state college fund -**
2 **creation - control - use.** (1) There is created in the state treasury the
3 board of trustees for Mesa state college fund, referred to in this section as
4 the "fund", which shall be under the control of and administered by the
5 board of trustees in accordance with the provisions of this article. ~~Except~~
6 ~~as otherwise allowed by state law, including but not limited to section~~
7 ~~24-36-103 (2), C.R.S., all~~ THE BOARD OF TRUSTEES SHALL HAVE
8 AUTHORITY AND RESPONSIBILITY FOR ALL MONEYS OF THE BOARD OF
9 TRUSTEES AND OF MESA STATE COLLEGE. THE BOARD OF TRUSTEES SHALL
10 DESIGNATE, PURSUANT TO ITS STATUTORY AUTHORITY, THOSE moneys
11 received or acquired by the board of trustees or by Mesa state college,
12 ~~shall be deposited in the fund,~~ whether received by appropriation, grant,
13 contract, or gift or by sale or lease of surplus real or personal property or
14 by any other means, whose disposition is not otherwise provided for by
15 law, THAT SHALL BE CREDITED TO THE FUND. All interest and income
16 derived from the deposit and investment of moneys in the fund shall be
17 credited to the fund. The moneys in the fund are hereby continuously
18 appropriated to the board of trustees and shall remain in the fund UNDER
19 THE CONTROL OF THE BOARD OF TRUSTEES and shall not be transferred or
20 revert to the general fund of the state at the end of a fiscal year.

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

1 FROM THE FINANCIAL COMMUNITY.

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

5 **23-53-103.3. Investments in consolidated funds.** UNLESS
6 OTHERWISE RESTRAINED BY THE TERMS OF A WILL, TRUST AGREEMENT, OR
7 OTHER INSTRUMENT OF GIFT, THE BOARD OF TRUSTEES IS AUTHORIZED TO
8 HOLD INVESTMENTS IN ONE OR MORE CONSOLIDATED INVESTMENT FUNDS
9 IN WHICH THE PARTICIPATING TRUSTS OR ACCOUNTS HAVE UNDIVIDED
10 INTERESTS.

11 **23-53-103.4. Corporate stock in name of nominee authorized.**

12 (1) IN ORDER TO FACILITATE THE INVESTMENT, REINVESTMENT, SALE,
13 AND DISPOSITION OF CORPORATE STOCKS, THE BOARD OF TRUSTEES IS
14 AUTHORIZED TO HOLD CERTIFICATES OF STOCK IN THE NAME OF A
15 NOMINEE OF ITS SELECTION WITHOUT DISCLOSING THE FACT THAT THE
16 CERTIFICATES ARE HELD BY THE BOARD OF TRUSTEES OR ARE HELD IN A
17 FIDUCIARY CAPACITY IF:

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

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

27 (2) THE BOARD OF TRUSTEES SHALL MAINTAIN A LIST OF

1 CERTIFICATES OF STOCK HELD IN THE NAMES OF NOMINEES PURSUANT TO
2 THIS SECTION AND SHALL MAKE THE LIST AVAILABLE FOR PUBLIC
3 INSPECTION DURING NORMAL BUSINESS HOURS.

4 (3) THE BOARD OF TRUSTEES SHALL REPORT TO THE JOINT BUDGET
5 COMMITTEE OF THE GENERAL ASSEMBLY AT EACH REGULAR SESSION
6 REGARDING THE INVESTMENTS MADE AND THE EARNINGS OR LOSSES
7 DERIVED THEREFROM UNDER THE PROVISIONS OF THIS SECTION AND
8 SECTION 23-53-103.3. THE REPORT SHALL INCLUDE INFORMATION
9 INDICATING THE EXTENT TO WHICH THE INVESTMENT MANAGERS HIRED BY
10 THE BOARD OF TRUSTEES HAVE ACHIEVED OR FAILED TO ACHIEVE THE
11 PERFORMANCE BENCHMARKS ESTABLISHED PURSUANT TO SECTION
12 23-53-103.6 (1) (b).

13 **23-53-103.6. Investment policy - fiduciary responsibility.**

14 (1) IF THE BOARD OF TRUSTEES VOTES TO INVEST MESA STATE COLLEGE'S
15 ASSETS PURSUANT TO SECTIONS 23-53-103.3 AND 23-53-103.4, THEN THE
16 BOARD OF TRUSTEES SHALL DEVELOP AND ANNUALLY REVIEW A WRITTEN
17 INVESTMENT POLICY FOR MESA STATE COLLEGE, WHICH POLICY SHALL
18 INCLUDE:

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

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

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

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

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

17 (5) MESA STATE COLLEGE SHALL NOT REQUEST FROM THE
18 GENERAL ASSEMBLY ANY GENERAL FUND APPROPRIATIONS TO REPLACE
19 ANY LOSSES INCURRED DUE TO INVESTMENT ACTIVITIES CONDUCTED BY
20 THE BOARD OF TRUSTEES PURSUANT TO SECTIONS 23-53-103.3 AND
21 23-53-103.4.

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

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

27 **23-30-106. Board of governors of the Colorado state university**

1 **system fund - creation - control - use.** (1) There is hereby created in
2 the state treasury the board of governors of the Colorado state university
3 system fund which shall be under the control of and administered by the
4 board of governors of the Colorado state university system in accordance
5 with the provisions of this article. ~~Except as otherwise allowed by section~~
6 ~~24-36-103 (2), C.R.S., all~~ THE BOARD OF GOVERNORS SHALL HAVE
7 AUTHORITY AND RESPONSIBILITY FOR ALL MONEYS OF THE BOARD OF
8 GOVERNORS AND ANY ENTITY GOVERNED BY IT. THE BOARD OF
9 GOVERNORS SHALL DESIGNATE, PURSUANT TO ITS STATUTORY AUTHORITY,
10 THOSE moneys received or acquired by the board of governors of the
11 Colorado state university system or any of the entities it governs, whether
12 by appropriation, grant, contract, or gift, by sale or lease of surplus real
13 or personal property, or by any other means, whose disposition is not
14 otherwise provided for by law, ~~and~~ THAT SHALL BE CREDITED TO THE
15 FUND. All interest derived from the deposit and investment of moneys in
16 the fund shall be credited to the fund. The moneys in the fund are hereby
17 continuously appropriated to the board of governors of the Colorado state
18 university system and shall remain in the fund UNDER THE CONTROL OF
19 THE BOARD OF GOVERNORS and shall not be transferred or revert to the
20 general fund of the state at the end of any fiscal year.

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

1 OF GOVERNORS, AND THREE REPRESENTATIVES OF THE FINANCIAL
2 COMMUNITY.

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

6 **23-30-121. Investments in consolidated funds.** UNLESS
7 OTHERWISE RESTRAINED BY THE TERMS OF A WILL, TRUST AGREEMENT, OR
8 OTHER INSTRUMENT OF GIFT, THE BOARD OF GOVERNORS OF THE
9 COLORADO STATE UNIVERSITY SYSTEM MAY HOLD INVESTMENTS IN ONE
10 OR MORE CONSOLIDATED INVESTMENT FUNDS IN WHICH THE
11 PARTICIPATING TRUSTS OR ACCOUNTS HAVE UNDIVIDED INTERESTS.

12 **23-30-122. Corporate stock in nominee authorized.** (1) IN
13 ORDER TO FACILITATE THE INVESTMENT, REINVESTMENT, SALE, AND
14 DISPOSITION OF CORPORATE STOCKS, THE BOARD OF GOVERNORS OF THE
15 COLORADO STATE UNIVERSITY SYSTEM, REFERRED TO IN THIS SECTION AS
16 THE "BOARD", IS AUTHORIZED TO HOLD CERTIFICATES OF STOCK IN THE
17 NAME OF A NOMINEE OF ITS SELECTION WITHOUT DISCLOSING THE FACT
18 THAT THE CERTIFICATES ARE HELD BY THE BOARD OR ARE HELD IN A
19 FIDUCIARY CAPACITY IF:

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

23 (b) THE NOMINEE DEPOSITS WITH THE BOARD A SIGNED
24 STATEMENT SHOWING THE TRUST OWNERSHIP, ENDORSES THE STOCK
25 CERTIFICATE IN BLANK, AND DOES NOT HAVE POSSESSION OF OR ACCESS TO
26 THE STOCK CERTIFICATE EXCEPT UNDER THE IMMEDIATE SUPERVISION OF
27 THE TREASURER OF THE COLORADO STATE UNIVERSITY SYSTEM OR

1 ANOTHER PERSON THAT THE BOARD HAS DESIGNATED.

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

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

14 **23-30-123. Investment policy - fiduciary responsibility.** (1) IF
15 THE BOARD OF GOVERNORS VOTES TO INVEST ASSETS OF THE COLORADO
16 STATE UNIVERSITY SYSTEM PURSUANT TO SECTIONS 23-30-121 AND
17 23-30-122, THE BOARD SHALL DEVELOP AND ANNUALLY REVIEW A
18 WRITTEN INVESTMENT POLICY FOR THE COLORADO STATE UNIVERSITY
19 SYSTEM, WHICH POLICY SHALL INCLUDE:

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

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

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

1 COMPETITIVE PROCESS.

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

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

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

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

25 (5) THE COLORADO STATE UNIVERSITY SYSTEM SHALL NOT
26 REQUEST FROM THE GENERAL ASSEMBLY ANY GENERAL FUND
27 APPROPRIATIONS TO REPLACE ANY LOSSES INCURRED DUE TO INVESTMENT

1 ACTIVITIES CONDUCTED BY THE BOARD OF GOVERNORS PURSUANT TO
2 SECTIONS 23-30-121 AND 23-30-122.

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