

**Second Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 04-0660.02 Michele Hanigsberg

SENATE BILL 04-189

SENATE SPONSORSHIP

Anderson

HOUSE SPONSORSHIP

King

Senate Committees

Education
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING INSTITUTIONS OF HIGHER EDUCATION.**

Bill Summary

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

Establishes the college opportunity fund program ("program") in the department of higher education ("department"), which shall be administered by the Colorado student loan program ("CSLP"). Requires each state institution of higher education and participating private institution of higher education that does not receive loan services through the CSLP to pay an implementation fee and an on-going disbursement fee. Establishes the college opportunity fund ("fund") and specifies that the fund shall be a trust fund for the benefit of eligible undergraduate students ("students") and shall consist of a stipend for each student.

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.

Requires the general assembly, beginning with the state fiscal year commencing July 1, 2005, and for each state fiscal year thereafter, to make an annual appropriation to the CSLP, in trust for students, to the fund. Specifies that any unexpended and unencumbered moneys in the fund at the end of a fiscal year are the property of the trust and shall remain in the fund.

Requires a student to apply for the program, and requires the CSLP to determine the student's eligibility for the stipend. Specifies that, if a student does not apply for or is determined ineligible for the program, the student shall be responsible for paying the student's total in-state tuition amount. Sets out the process for an institution to receive the stipend on behalf of a student. Prohibits an institution from billing a student for any additional amount to make up for a reduction in the stipend amount or issues relating to the timing of stipend payments.

Requires a private institution of higher education to enter into a performance contract with the department if the institution wants to receive stipends paid on behalf of students. Specifies that a student who attends a private institution of higher education may receive 50% of the stipend amount and that the amount of the stipend for the student may increase in proportion to the percentage of unfunded enrollment growth that is appropriated to the governing boards.

For the state fiscal year commencing July 1, 2005, and for each state fiscal year thereafter, requires the Colorado commission on higher education ("commission"), in consultation with the governing boards and participating private institutions, to annually estimate the number of undergraduate full-time equivalent students who are eligible for stipends at each institution of higher education and to report the numbers during the annual budget cycle.

Specifies that, for the state fiscal year commencing July 1, 2005, and for state fiscal years thereafter, for a student attending a state institution of higher education, the specified amount of the stipend per credit hour shall be an amount set annually by the general assembly, which in no case shall exceed the student's total in-state tuition. Specifies that the student shall be responsible for paying the student's share of total in-state tuition, if any.

Limits the number of credit hours for which a student can receive a stipend to 140 credit hours, but allows the commission to grant a waiver of the limitation under specified circumstances. Requires the commission to establish a system to prorate the number of credit hours for which a student may receive a stipend from the fund if the student is a continuing student as of July 1, 2005. Specifies courses for which a student may not receive a stipend.

For the state fiscal year commencing July 1, 2005, and for each state fiscal year thereafter, requires the general assembly to appropriate spending authority to each governing board for the amount of cash funds

exempt estimated to be received by the governing board as stipends. Specifies that the spending authority for the stipends estimated to be received shall be calculated by multiplying the applicable per-credit-hour stipend by the number of undergraduate students eligible for a stipend who are estimated to be enrolled in the institution of higher education under the direction and control of the governing board. Requires the general assembly to make annual appropriations of general fund moneys, of cash funds received from tuition income, and of cash funds exempt that are estimated to be received by the governing board as stipends, as a single line item to each governing board for the operation of its campuses.

Specifies that the tuition increases from which the general assembly derived the total cash spending authority for each governing board shall be noted in a footnote to the general appropriations bill. Requires the commission and the state treasurer, in consultation with the governing boards, to cooperatively establish a disbursement schedule for stipends awarded to insure the most beneficial cash flow for the state and to minimize the cost to and effects on the state general fund.

Beginning July 1, 2004, requires a governing board of a state institution of higher education or a private institution of higher education that would like to receive stipends on behalf of students to negotiate a performance contract with the department that shall specify the performance goals the institution shall achieve during the period that it operates under the performance contract. Allows a state institution of higher education that enters into a performance contract with the department to request an exemption from the procurement code and the central motor vehicle fleet system.

Specifies that the governing board of a state institution of higher education, while operating under a performance contract, need not consult with nor obtain approval from the commission to create, modify, or eliminate academic and vocational programs offered by the institution, so long as such creations, modifications, and eliminations are consistent with the institution's statutory role and mission. Allows the commission to override the creation or modification of an academic or vocational program if the change is inconsistent with the institution's statutory role and mission.

Requires the commission, in consultation with the governing boards, to calculate the amount of enrollment growth that has not been funded for each governing board from state fiscal year 2000-01 through 2004-05. Specifies that, during the period that a governing board is operating pursuant to a performance contract, the commission may request, as part of the annual budget cycle, a general fund appropriation for each governing board for the amount of unfunded enrollment growth to the extent that there remains an amount of enrollment growth that is unfunded for the governing board.

Specifies that while a state institution of higher education is operating pursuant to a performance contract, the general assembly retains the authority to approve tuition spending authority for the governing board of the institution.

Requires the commission to be responsible for ensuring the provision of specific postsecondary educational services in the state. Authorizes the department on behalf of the commission to enter into fee-for-service contracts with a governing board of an institution of higher education to provide the specified higher education services. Specifies that the department may only contract with the governing board of an institution of higher education to the extent that the contract remains consistent with the governing board's performance contract.

Beginning July 1, 2005, authorizes the governing board of a state institution of higher education to negotiate a fee-for-service contract with the department for the delivery of higher education services by the institution to the residents of the state of Colorado. Specifies the higher education services that may be the subject of the fee-for-service agreement. Requires the commission to make annual funding recommendations to the general assembly and the governor regarding the funding necessary for the department to contract on the commission's behalf for the provision of higher education services in the state. Requires the general assembly to annually appropriate to the commission an amount of general fund moneys to carry out the purposes the fee-for-service contracts.

Authorizes an institution of higher education or a group of institutions of higher education to be designated as an enterprise by resolution of the governing board of the institution or group of institutions for the purposes of section 20 of article X of the state constitution. Specifies that an institution of higher education or group of institutions of higher education may be designated as an enterprise only so long as the governing board of the institution or group of institutions retains authority to issue revenue bonds on behalf of the institution or group of institutions and the institution or group of institutions receives less than 10% of total annual revenues in grants from all Colorado state and local governments combined. Specifies that the term "grant" for the purposes of section 20 of article X of the state constitution does not include: Fees received by an institution pursuant to a fee-for-service contract between the department and the institution or the institution's governing board; or revenues received by an institution or group of institutions that have been paid on behalf of an eligible undergraduate student as stipends from the fund.

Makes conforming changes.

1 **SECTION 1. Legislative findings and declarations.** (1) The
2 general assembly finds that:

3 (a) For the future of the state of Colorado and its citizens, it is
4 imperative that an increased number of Coloradans pursue education
5 beyond high school;

6 (b) A postsecondary educational experience for Coloradans is
7 essential for the state to compete in the new global economy and to
8 develop a new generation of leaders and active participants in state and
9 local civic affairs;

10 (c) In particular, it is critical that the rate of postsecondary
11 participation by low-income Coloradans, males, and minorities, who are
12 currently under-represented, be increased at every Colorado state
13 institution of higher education; and

14 (d) It is appropriate to support programs that are designed to
15 encourage participation in postsecondary education, that increase citizens'
16 awareness of the value of and need for a postsecondary education, and
17 that make citizens aware of the financial support provided by the general
18 assembly to students and institutions of higher education.

19 (2) The general assembly further finds that without increased
20 resources, Colorado's system of public higher education will be
21 challenged in meeting the need for postsecondary education.

22 (3) The general assembly also finds that the governor created a
23 blue ribbon panel on higher education consisting of prominent Colorado
24 citizens, and the blue ribbon panel found that:

25 (a) Colorado is a paradox in terms of its citizens' overall
26 educational attainment level and the participation of its high school
27 students in higher education immediately following high school;

1 (b) During the past two decades, Colorado has been at the top or
2 near the top of all states for the highest percentage of its adult population
3 holding at least a bachelor's degree;

4 (c) According to a national report, Colorado was tied for
5 twenty-seventh among all states with only thirty-nine percent of its high
6 school freshmen going on within four years to attend a postsecondary
7 institution;

8 (d) A substantial number of Coloradans are not participating in
9 higher education, and, as a result, Colorado's citizens are not benefitting
10 from the current system or the current funding of higher education;

11 (e) Based on these findings, the blue ribbon panel set as a goal
12 increased access and opportunities for Coloradans by encouraging
13 participation of groups who are currently under-represented, specifically
14 low-income individuals, males, and minority groups, at every Colorado
15 state institution of higher education and increased participation of recent
16 high school graduates at those institutions; and

17 (f) The blue ribbon panel further recommended that the state
18 fundamentally change the process by which postsecondary education is
19 financed from that of funding institutions to funding individual students.

20 (4) The general assembly further finds that:

21 (a) Funding students can have the impact of strengthening
22 competition among institutions which in turn can lead to improved quality
23 and greater differentiation; and

24 (b) Greater resource flexibility for institutions can enhance more
25 educational opportunities for low-income and other under-represented
26 students, as well as increase educational excellence.

27 (5) Therefore, it is the intent of the general assembly that:

1 (a) This new funding system should encourage access and student
2 enrollment for undergraduate students while maintaining distinctive
3 missions of universities and colleges and encouraging geographical
4 access;

5 (b) All Colorado residents should have access to the college
6 opportunity fund; and

7 (c) Performance contracts should provide for greater flexibility
8 and a more focused accountability for institutions to students and the
9 people of Colorado.

10 (6) It is the intent of the general assembly in enacting this act to
11 fundamentally change the process by which the state finances
12 postsecondary education from funding institutions to funding individuals.

13 (7) It is the further intent of the general assembly that:

14 (a) The state, through the Colorado commission on higher
15 education, shall acquire from institutions of higher education specified
16 educational services and facilities required for the full development of
17 Colorado's educational and economic opportunities; and

18 (b) Such services shall be acquired under an agreement negotiated
19 between the commission and the institutional governing boards pursuant
20 to which the governing boards agree to provide specified educational
21 services and facilities in exchange for the commission's payment, on
22 behalf of the state, of agreed-upon charges.

23 (8) The general assembly finds and declares that:

24 (a) The provision of higher education services is a business; and

25 (b) For the purposes of determining whether an institution or
26 group of institutions may be designated as an enterprise, so long as the
27 institution or group of institutions receives less than ten percent of its

1 total annual revenues in grants from all Colorado state and local
2 governments combined, it is sufficient that the governing board of an
3 institution of higher education has authority to issue revenue bonds on
4 behalf of such institution or group of institutions.

5 (9) It is not the intent of the general assembly in enacting this act
6 to cause the closure of any institution of higher education.

7 (10) While it is the general assembly's intent to change the process
8 of funding for postsecondary education, funding for postsecondary
9 education is not an entitlement. During periods of revenue shortfalls, the
10 general assembly may use a variety of mechanisms to balance the state's
11 budget, including reducing appropriations to institutions of higher
12 education, decreasing the value of the stipend, or placing a limit on the
13 number of stipends funded under this act based upon the overall
14 budgetary needs of the state.

15 **SECTION 2.** Title 23, Colorado Revised Statutes, is amended
16 BY THE ADDITION OF A NEW ARTICLE to read:

17 **ARTICLE 18**

18 **College Opportunity Fund**

19 **PART 1**

20 **GENERAL PROVISIONS**

21 **23-18-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY
22 BE CITED AS THE "COLLEGE OPPORTUNITY FUND ACT".

23 **23-18-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
24 CONTEXT OTHERWISE REQUIRES:

25 (1) "CASH FUNDS" MEANS FUNDS RECEIVED FROM TUITION INCOME,
26 FEES, INDIRECT COST RECOVERIES, AND OTHER SOURCES OF FUNDS THAT
27 MAY BE APPROPRIATED AS CASH FUNDS FOR STATE INSTITUTIONS OF

1 HIGHER EDUCATION; EXCEPT THAT "CASH FUNDS" SHALL NOT INCLUDE
2 FUNDS DERIVED FROM GIFTS, FEDERAL FUNDS, OR OTHER SOURCES FROM
3 WHICH AN EXPENDITURE OR RESERVE INCREASE IS NOT SUBJECT TO THE
4 PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

5 (2) "CASH FUNDS EXEMPT" MEANS FUNDS DERIVED FROM GIFTS,
6 FEDERAL FUNDS, OR OTHER SOURCES FROM WHICH AN EXPENDITURE OR
7 RESERVE INCREASE IS NOT SUBJECT TO THE PROVISIONS OF SECTION 20 OF
8 ARTICLE X OF THE STATE CONSTITUTION.

9 (3) "COLLEGE OPPORTUNITY FUND" OR "FUND" MEANS THE
10 COLLEGE OPPORTUNITY FUND CREATED IN SECTION 23-18-202.

11 (4) "COLLEGE OPPORTUNITY FUND PROGRAM" OR "PROGRAM"
12 MEANS THE COLLEGE OPPORTUNITY FUND PROGRAM CREATED IN THE
13 DEPARTMENT OF HIGHER EDUCATION PURSUANT TO SECTION 23-18-201 (1).

14 (5) "COMMISSION" MEANS THE COLORADO COMMISSION ON
15 HIGHER EDUCATION ESTABLISHED PURSUANT TO SECTION 23-1-102.

16 (6) "DEPARTMENT" MEANS THE COLORADO DEPARTMENT OF
17 HIGHER EDUCATION ESTABLISHED PURSUANT TO SECTION 24-1-114, C.R.S.

18 (7) (a) "ELIGIBLE UNDERGRADUATE STUDENT" MEANS:

19 (I) A STUDENT WHO IS ENROLLED AT A STATE INSTITUTION OF
20 HIGHER EDUCATION AND WHO IS CLASSIFIED AS AN IN-STATE STUDENT FOR
21 TUITION PURPOSES; OR

22 (II) A STUDENT WHO IS ENROLLED AT A PARTICIPATING PRIVATE
23 INSTITUTION OF HIGHER EDUCATION AND WHO:

24 (A) IS CLASSIFIED AS AN IN-STATE STUDENT FOR TUITION
25 PURPOSES;

26 (B) IS A GRADUATE OF A COLORADO HIGH SCHOOL;

27 (C) DEMONSTRATES FINANCIAL NEED THROUGH THE STUDENT'S

1 ELIGIBILITY FOR THE FEDERAL PELL GRANT, OR ITS SUCCESSOR PROGRAM;
2 AND

3 (D) MEETS ANY OTHER ELIGIBILITY REQUIREMENTS ESTABLISHED
4 BY THE COMMISSION.

5 (b) "ELIGIBLE UNDERGRADUATE STUDENT" SHALL NOT MEAN A
6 STUDENT ENROLLED IN AN OFF-CAMPUS, EXTENDED CAMPUS, OR
7 CONTINUING EDUCATION CLASS, THAT IS NOT SUPPORTED BY STATE
8 GENERAL FUND MONEYS, EXCEPT AS APPROVED BY THE COMMISSION.

9 (8) "GOVERNING BOARD" MEANS THE GOVERNING BODY OF A
10 STATE INSTITUTION OF HIGHER EDUCATION.

11 (9) "INSTITUTION OF HIGHER EDUCATION" MEANS A PARTICIPATING
12 PRIVATE INSTITUTION OF HIGHER EDUCATION OR A STATE INSTITUTION OF
13 HIGHER EDUCATION.

14 (10) "PARTICIPATING PRIVATE INSTITUTION OF HIGHER
15 EDUCATION" MEANS A PRIVATE INSTITUTION OF HIGHER EDUCATION THAT
16 ENTERS INTO A PERFORMANCE CONTRACT WITH THE DEPARTMENT
17 PURSUANT TO SECTION 23-5-128 AND AGREES TO PARTICIPATE IN THE
18 PROGRAM.

19 (11) "PRIVATE INSTITUTION OF HIGHER EDUCATION" MEANS A
20 NOT-FOR-PROFIT COLLEGE OR UNIVERSITY THAT IS NOT PERVASIVELY
21 SECTARIAN AND THAT MAINTAINS ITS PRIMARY PLACE OF BUSINESS IN THE
22 STATE OF COLORADO, THAT OFFERS GENERAL BACCALAUREATE DEGREES
23 IN ARTS AND SCIENCES, AND THAT IS INSTITUTIONALLY ACCREDITED ON
24 THE BASIS OF AN ON-SITE REVIEW IN COLORADO BY ONE OF THE SIX
25 NATIONALLY RECOGNIZED REGIONAL ACCREDITING ASSOCIATIONS OR BY
26 AN ACCREDITING AGENCY DETERMINED BY THE COMMISSION TO BE
27 APPROPRIATE TO ITS EDUCATIONAL PURPOSES AND PROGRAMS.

1 (12) (a) "STATE INSTITUTION OF HIGHER EDUCATION" MEANS A
2 PUBLIC POSTSECONDARY INSTITUTION THAT IS GOVERNED BY:

3 (I) THE BOARD OF GOVERNORS OF THE COLORADO STATE
4 UNIVERSITY SYSTEM;

5 (II) THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO;

6 (III) THE BOARD OF TRUSTEES OF THE COLORADO SCHOOL OF
7 MINES;

8 (IV) THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTHERN
9 COLORADO;

10 (V) THE BOARD OF TRUSTEES OF ADAMS STATE COLLEGE;

11 (VI) THE BOARD OF TRUSTEES OF WESTERN STATE COLLEGE OF
12 COLORADO;

13 (VII) THE BOARD OF TRUSTEES OF MESA STATE COLLEGE;

14 (VIII) THE BOARD OF TRUSTEES FOR FORT LEWIS COLLEGE;

15 (IX) THE BOARD OF TRUSTEES FOR METROPOLITAN STATE
16 COLLEGE OF DENVER; OR

17 (X) THE STATE BOARD FOR COMMUNITY COLLEGES AND
18 OCCUPATIONAL EDUCATION.

19 (b) "STATE INSTITUTION OF HIGHER EDUCATION" ALSO MEANS THE
20 FOLLOWING PUBLIC AREA VOCATIONAL SCHOOLS:

21 (I) EMILY GRIFFITH OPPORTUNITY SCHOOL;

22 (II) DELTA-MONTROSE AREA VOCATIONAL SCHOOL;

23 (III) SAN JUAN BASIN AREA VOCATIONAL SCHOOL; AND

24 (IV) AURORA TECH CENTER.

25 (c) "STATE INSTITUTION OF HIGHER EDUCATION" DOES NOT
26 INCLUDE A JUNIOR COLLEGE THAT IS PART OF A JUNIOR COLLEGE DISTRICT
27 ORGANIZED PURSUANT TO ARTICLE 71 OF THIS TITLE.

1 (13) "STIPEND" MEANS THE AMOUNT OF MONEY PER CREDIT HOUR
2 SPECIFIED PURSUANT TO SECTION 23-18-202 (2) (b) HELD IN TRUST FOR
3 AND PAID ON BEHALF OF AN ELIGIBLE UNDERGRADUATE STUDENT
4 PURSUANT TO SECTION 23-18-202 (5).

5 (14) "STUDENT'S SHARE OF IN-STATE TUITION" MEANS THE AMOUNT
6 OF TOTAL IN-STATE TUITION, LESS ANY AMOUNT PAID ON BEHALF OF THE
7 STUDENT AS A STIPEND.

8 (15) "TOTAL IN-STATE TUITION" MEANS THE TOTAL AMOUNT OF
9 TUITION THAT IS PAID TO A STATE INSTITUTION OF HIGHER EDUCATION BY
10 OR ON BEHALF OF A STUDENT WHO IS ELIGIBLE TO PAY IN-STATE TUITION,
11 INCLUDING BUT NOT LIMITED TO THE AMOUNT OF THE STIPEND PAID ON
12 BEHALF OF THE STUDENT.

13 PART 2

14 COLLEGE OPPORTUNITY FUND PROGRAM

15 **23-18-201. College opportunity fund program - creation -**
16 **eligibility - guidelines.** (1) THERE IS HEREBY CREATED IN THE
17 DEPARTMENT OF HIGHER EDUCATION THE COLLEGE OPPORTUNITY FUND
18 PROGRAM, WHICH SHALL BE ADMINISTERED BY THE COLORADO STUDENT
19 LOAN PROGRAM. THE COLLEGE OPPORTUNITY FUND, CREATED IN SECTION
20 23-18-202, SHALL BE A TRUST FUND FOR THE BENEFIT OF ELIGIBLE
21 UNDERGRADUATE STUDENTS. IT SHALL CONSIST OF A STIPEND FOR EACH
22 UNDERGRADUATE STUDENT IN COLORADO WHO APPLIES FOR THE STIPEND
23 AND WHO IS ADMITTED AND REGISTERS TO ATTEND A STATE OR
24 PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION AND IS
25 DETERMINED TO BE ELIGIBLE BY THE COLORADO STUDENT LOAN PROGRAM
26 TO RECEIVE A STIPEND. AN ELIGIBLE UNDERGRADUATE STUDENT MAY USE
27 THE STIPEND FOR UNDERGRADUATE COURSES TAKEN AT A STATE OR

1 PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION AT A FIXED
2 RATE PER CREDIT HOUR, SET ANNUALLY BY THE GENERAL ASSEMBLY.

3 (2) A STUDENT OF A PRIVATE INSTITUTION OF HIGHER EDUCATION
4 SHALL BE A BENEFICIARY OF THE COLLEGE OPPORTUNITY FUND AND
5 ELIGIBLE TO PARTICIPATE IN THE COLLEGE OPPORTUNITY FUND PROGRAM
6 ONLY IF THE PRIVATE INSTITUTION OF HIGHER EDUCATION THAT THE
7 STUDENT ATTENDS HAS AGREED TO PARTICIPATE IN THE PROGRAM BY
8 ESTABLISHING A PERFORMANCE CONTRACT WITH THE DEPARTMENT
9 PURSUANT TO SECTION 23-5-128. THE DEPARTMENT SHALL INCLUDE EACH
10 PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION AND ITS
11 STUDENTS IN THE STUDENT UNIT REPORTING DATA SYSTEM, IN ORDER TO
12 ENABLE THE STUDENTS OF THE PARTICIPATING PRIVATE INSTITUTION OF
13 HIGHER EDUCATION TO PARTICIPATE IN THE PROGRAM. THE PARTICIPATING
14 PRIVATE INSTITUTION OF HIGHER EDUCATION SHALL REIMBURSE THE
15 DEPARTMENT FOR THE ACTUAL EXPENSES ASSOCIATED WITH INCLUDING
16 THE INSTITUTION IN THE STUDENT UNIT REPORTING DATA SYSTEM.

17 (3) THE COLORADO STUDENT LOAN PROGRAM, IN CONSULTATION
18 WITH THE GOVERNING BOARDS, SHALL ADOPT THE NECESSARY POLICIES
19 FOR THE IMPLEMENTATION OF THIS PART 2, WHICH AT A MINIMUM SHALL
20 INCLUDE PROCEDURES FOR REQUESTING FUNDS FOR THE PROGRAM WHICH
21 ADHERE TO COMMISSION BUDGET GUIDELINES AND THE ANNUAL
22 BUDGETING CYCLE OF THE EXECUTIVE AND LEGISLATIVE BRANCHES.

23 (4) THE COLORADO STUDENT LOAN PROGRAM SHALL DIRECT ALL
24 STATE AND PARTICIPATING PRIVATE INSTITUTIONS OF HIGHER EDUCATION
25 TO REQUIRE RESIDENT UNDERGRADUATE STUDENTS TO APPLY FOR THE
26 PROGRAM. IF A STUDENT IS CLASSIFIED AS AN IN-STATE STUDENT FOR
27 TUITION PURPOSES AND DOES NOT APPLY FOR THE PROGRAM OR IS NOT

1 ELIGIBLE FOR THE PROGRAM, THE STUDENT SHALL BE RESPONSIBLE FOR
2 PAYING THE STUDENT'S TOTAL IN-STATE TUITION AMOUNT.

3 **23-18-202. College opportunity fund - appropriations -**
4 **payment of stipends - reimbursement.** (1) (a) BEGINNING WITH THE
5 STATE FISCAL YEAR COMMENCING JULY 1, 2005, AND FOR EACH STATE
6 FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY SHALL MAKE AN
7 ANNUAL APPROPRIATION, IN TRUST FOR ELIGIBLE UNDERGRADUATE
8 STUDENTS, TO THE COLLEGE OPPORTUNITY FUND, WHICH IS HEREBY
9 ESTABLISHED AS A TRUST FUND ACCOUNT WITH THE COLORADO STUDENT
10 LOAN PROGRAM. MONEYS APPROPRIATED TO THE COLLEGE OPPORTUNITY
11 FUND ARE FOR THE SOLE PURPOSE OF DISBURSEMENT ON BEHALF OF
12 ELIGIBLE UNDERGRADUATE STUDENTS IN ACCORDANCE WITH THIS PART 2
13 AND ARE NOT FOR THE GENERAL OPERATION OR ANY OTHER FUNCTION OF
14 THE COLORADO STUDENT LOAN PROGRAM. ANY UNEXPENDED AND
15 UNENCUMBERED MONEYS REMAINING IN THE COLLEGE OPPORTUNITY FUND
16 AT THE END OF A FISCAL YEAR ARE THE PROPERTY OF THE TRUST FUND AND
17 SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR
18 TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

19 (b) THE COLORADO STUDENT LOAN PROGRAM SHALL ADMINISTER
20 AND DISBURSE THE FUNDS IN THE COLLEGE OPPORTUNITY FUND ON BEHALF
21 OF ELIGIBLE UNDERGRADUATE STUDENTS AS PROVIDED IN THIS PART 2.
22 EACH STATE INSTITUTION OF HIGHER EDUCATION AND PARTICIPATING
23 PRIVATE INSTITUTION OF HIGHER EDUCATION THAT DOES NOT RECEIVE
24 LOAN SERVICES THROUGH THE COLORADO STUDENT LOAN PROGRAM
25 SHALL PAY AN IMPLEMENTATION FEE AND AN ON-GOING DISBURSEMENT
26 FEE, THE AMOUNTS OF WHICH SHALL BE DETERMINED BY THE COLORADO
27 STUDENT LOAN PROGRAM.

1 (2) (a) FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2005,
2 AND FOR EACH STATE FISCAL YEAR THEREAFTER, THE COMMISSION, IN
3 CONSULTATION WITH THE GOVERNING BOARDS AND PARTICIPATING
4 PRIVATE INSTITUTIONS, SHALL ANNUALLY ESTIMATE THE NUMBER OF
5 UNDERGRADUATE FULL-TIME EQUIVALENT STUDENTS WHO ARE ELIGIBLE
6 FOR STIPENDS UNDER THIS PART 2 AT EACH STATE INSTITUTION OF HIGHER
7 EDUCATION AND EACH PARTICIPATING PRIVATE INSTITUTION OF HIGHER
8 EDUCATION. THE COMMISSION SHALL REPORT THE NUMBERS DURING THE
9 ANNUAL BUDGET CYCLE TO THE GOVERNOR AND TO THE JOINT BUDGET
10 COMMITTEE OF THE GENERAL ASSEMBLY FOR INCLUSION IN THE ANNUAL
11 GENERAL APPROPRIATIONS ACT.

12 (b) FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2005, AND
13 FOR STATE FISCAL YEARS THEREAFTER, FOR AN ELIGIBLE UNDERGRADUATE
14 STUDENT ATTENDING A STATE INSTITUTION OF HIGHER EDUCATION, THE
15 SPECIFIED AMOUNT OF THE STIPEND PER CREDIT HOUR SHALL BE AN
16 AMOUNT SET ANNUALLY BY THE GENERAL ASSEMBLY, WHICH IN NO CASE
17 SHALL EXCEED THE STUDENT'S TOTAL IN-STATE TUITION. THE VALUE OF
18 THE PER CREDIT HOUR STIPEND SHALL BE THE SAME FOR EACH ELIGIBLE
19 UNDERGRADUATE STUDENT, REGARDLESS OF THE STATE INSTITUTION OF
20 HIGHER EDUCATION THAT THE STUDENT ATTENDS. THE STUDENT SHALL BE
21 RESPONSIBLE FOR PAYING THE STUDENT'S SHARE OF TOTAL IN-STATE
22 TUITION, IF ANY.

23 (c) THE COMMISSION SHALL FORWARD TO THE GENERAL ASSEMBLY
24 AND GOVERNOR, BY NOVEMBER 1 OF EACH YEAR, A LIST OF INSTITUTIONS
25 ELIGIBLE TO RECEIVE STIPENDS ON BEHALF OF ELIGIBLE UNDERGRADUATE
26 STUDENTS UNDER THE PROGRAM. THE COMMISSION SHALL ANNUALLY
27 REQUEST THAT THE GENERAL ASSEMBLY ADJUST THE AMOUNT

1 APPROPRIATED TO THE COLORADO STUDENT LOAN PROGRAM FOR THE
2 STIPENDS TO REFLECT AT LEAST INFLATION AND ENROLLMENT GROWTH IN
3 THE STATE INSTITUTIONS OF HIGHER EDUCATION, CONSISTENT WITH THE
4 LEGISLATIVE INTENT SET FORTH IN PARAGRAPH (d) OF THIS SUBSECTION
5 (2).

6 (d) BEGINNING WITH THE STATE FISCAL YEAR COMMENCING JULY
7 1, 2006, THE COMMISSION, IN CONSULTATION WITH THE GOVERNING
8 BOARDS AND ANY PARTICIPATING PRIVATE INSTITUTIONS OF HIGHER
9 EDUCATION, SHALL REVIEW ANNUALLY THE AMOUNT OF THE STIPEND PER
10 CREDIT HOUR ESTABLISHED PURSUANT TO PARAGRAPH (b) OF THIS
11 SUBSECTION (2). FOLLOWING THE REVIEW, THE COMMISSION, IN
12 CONSULTATION WITH THE GOVERNING BOARDS AND PARTICIPATING
13 PRIVATE INSTITUTIONS, SHALL ANNUALLY MAKE RECOMMENDATIONS
14 REGARDING POSSIBLE ADJUSTMENTS TO THE AMOUNT OF THE STIPEND PER
15 CREDIT HOUR TO THE GOVERNOR AND THE JOINT BUDGET COMMITTEE OF
16 THE GENERAL ASSEMBLY FOR CONSIDERATION IN PREPARING THE ANNUAL
17 GENERAL APPROPRIATIONS ACT. IT IS THE INTENT OF THE GENERAL
18 ASSEMBLY THAT THE AMOUNT APPROPRIATED FOR STIPENDS INCREASE AT
19 LEAST AT THE RATE OF INFLATION AND ENROLLMENT GROWTH.

20 (e) AN ELIGIBLE UNDERGRADUATE STUDENT WHO ATTENDS A
21 PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION MAY RECEIVE
22 FINANCIAL ASSISTANCE UNDER THIS PART 2 IN THE AMOUNT OF FIFTY
23 PERCENT OF THE STIPEND AMOUNT; EXCEPT THAT THE AMOUNT OF THE
24 STIPEND UNDER THIS PARAGRAPH (e) MAY INCREASE IN PROPORTION TO
25 THE PERCENT OF UNFUNDED ENROLLMENT GROWTH THAT IS APPROPRIATED
26 TO THE GOVERNING BOARDS PURSUANT TO SECTION 23-5-128 (8).

27 (3) (a) FOR THE STATE FISCAL YEAR COMMENCING JULY 1, 2005,

1 AND FOR EACH STATE FISCAL YEAR THEREAFTER, THE GENERAL ASSEMBLY
2 SHALL APPROPRIATE SPENDING AUTHORITY TO EACH GOVERNING BOARD
3 FOR THE CASH FUNDS EXEMPT ESTIMATED TO BE RECEIVED BY AN
4 INSTITUTION, UNDER THE DIRECTION AND CONTROL OF THE GOVERNING
5 BOARD, AS STIPENDS, CONSISTENT WITH THE PROVISIONS OF SECTION
6 23-1-104. THE SPENDING AUTHORITY FOR THE STIPENDS ESTIMATED TO BE
7 RECEIVED SHALL BE CALCULATED BY MULTIPLYING THE AMOUNT OF THE
8 APPLICABLE PER-CREDIT-HOUR STIPEND BY THE NUMBER OF ELIGIBLE
9 STUDENT CREDIT HOURS THAT ARE ESTIMATED TO BE ATTRIBUTABLE TO
10 EACH INSTITUTION OF HIGHER EDUCATION UNDER THE DIRECTION AND
11 CONTROL OF THE GOVERNING BOARD.

12 (b) THE TUITION INCREASES FROM WHICH THE GENERAL ASSEMBLY
13 DERIVED THE TOTAL CASH SPENDING AUTHORITY FOR EACH GOVERNING
14 BOARD SHALL BE NOTED IN A FOOTNOTE IN THE ANNUAL GENERAL
15 APPROPRIATIONS ACT.

16 (4) REGARDLESS OF WHEN AN INSTITUTION RECEIVES MONEYS IN
17 THE FORM OF A STIPEND ON BEHALF OF A STUDENT, OR IF THE STIPEND
18 AMOUNT IS REDUCED BY THE GENERAL ASSEMBLY, AN INSTITUTION SHALL
19 NOT INCREASE THE STUDENT'S SHARE OF IN-STATE TUITION TO MAKE UP
20 FOR AN ACTUAL OR EFFECTIVE REDUCTION IN THE STIPEND AMOUNT FROM
21 WHICH THE TOTAL IN-STATE TUITION AMOUNT WAS CALCULATED OR FOR
22 ISSUES RELATING TO THE TIMING OF STIPEND PAYMENTS.

23 (5) (a) AFTER AN UNDERGRADUATE STUDENT HAS APPLIED FOR THE
24 PROGRAM, BEEN APPROVED FOR THE PROGRAM, AND ENROLLED IN A STATE
25 OR PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION, THE
26 INSTITUTION SHALL REQUEST THAT THE COLORADO STUDENT LOAN
27 PROGRAM MAKE A STIPEND PAYMENT FROM THE COLLEGE OPPORTUNITY

1 FUND TO THE INSTITUTION ON BEHALF OF THE ELIGIBLE UNDERGRADUATE
2 STUDENT. A PAYMENT BY THE COLORADO STUDENT LOAN PROGRAM TO AN
3 INSTITUTION OF HIGHER EDUCATION FROM THE COLLEGE OPPORTUNITY
4 FUND SHALL NOT BE SUBJECT TO THE ASSESSMENT OF A TRANSACTION FEE
5 PURSUANT TO SECTION 24-36-120, C.R.S. THE STIPEND PAYMENT SHALL
6 BE PAID TO THE INSTITUTION UPON RECEIPT BY THE INSTITUTION OF THE
7 ELIGIBLE UNDERGRADUATE STUDENT'S AUTHORIZING SIGNATURE. THE
8 AMOUNT OF THE STIPEND PAID ON BEHALF OF AN ELIGIBLE
9 UNDERGRADUATE STUDENT SHALL BE APPLIED AGAINST THE STUDENT'S
10 TOTAL IN-STATE TUITION.

11 (b) THE STIPEND PAID BY THE COLORADO STUDENT LOAN
12 PROGRAM ON BEHALF OF THE ELIGIBLE UNDERGRADUATE STUDENT SHALL
13 BE NOTED ON THE STUDENT'S RECEIPT OF PAYMENT FROM THE STATE OR
14 PRIVATE INSTITUTION OF HIGHER EDUCATION AS THE "PAYMENT BY THE
15 STATE OF COLORADO, FROM THE COLLEGE OPPORTUNITY FUND".

16 (c) (I) AN ELIGIBLE UNDERGRADUATE STUDENT SHALL NOT
17 RECEIVE A STIPEND FROM THE COLLEGE OPPORTUNITY FUND FOR MORE
18 THAN ONE HUNDRED FORTY CREDIT HOURS DURING THE ELIGIBLE
19 UNDERGRADUATE STUDENT'S LIFETIME; EXCEPT THAT, IF AN ELIGIBLE
20 UNDERGRADUATE STUDENT HAS RECEIVED PAYMENT FOR A STIPEND FOR
21 ONE HUNDRED FORTY CREDIT HOURS AND THE STUDENT HAS RECEIVED A
22 BACHELOR'S DEGREE, THE ELIGIBLE UNDERGRADUATE STUDENT IS ELIGIBLE
23 TO RECEIVE STIPEND PAYMENTS FOR AN ADDITIONAL THIRTY
24 UNDERGRADUATE CREDIT HOURS.

25 (II) FOR AN ELIGIBLE UNDERGRADUATE STUDENT WHO IS
26 ENROLLED AS A CONTINUING STUDENT AS OF JULY 1, 2005, THE
27 COMMISSION SHALL DETERMINE THE NUMBER OF CREDIT HOURS FOR

1 WHICH THE STUDENT MAY RECEIVE A STIPEND FROM THE COLLEGE
2 OPPORTUNITY FUND, BASED ON THE LENGTH OF TIME THE ELIGIBLE
3 UNDERGRADUATE STUDENT HAS BEEN ENROLLED, BY PRORATING THE
4 LIFETIME-CREDIT-HOUR LIMITATION OVER FOUR YEARS.

5 (d) (I) AN INSTITUTION OF HIGHER EDUCATION SHALL NOT RECEIVE
6 THE PAYMENT OF A STIPEND ON BEHALF OF AN ELIGIBLE UNDERGRADUATE
7 STUDENT FOR:

8 (A) BASIC SKILLS COURSES, AS DEFINED IN SECTION 23-1-113 (1)

9 (b) (II) (A.7);

10 (B) COURSES TAKEN PURSUANT TO THE "POSTSECONDARY
11 ENROLLMENT OPTIONS ACT", ARTICLE 35 OF TITLE 22, C.R.S.;

12 (C) HIGH SCHOOL FAST-TRACK COURSES TAKEN PURSUANT TO
13 SECTION 22-34-101, C.R.S.;

14 (D) INTERNATIONAL BACCALAUREATE COURSES; OR

15 (E) ADVANCED PLACEMENT COURSES.

16 (II) THE INSTITUTION OF HIGHER EDUCATION IN WHICH AN ELIGIBLE
17 UNDERGRADUATE STUDENT ENROLLS MAY CONTRACT WITH THE
18 DEPARTMENT PURSUANT TO SECTION 23-5-129 TO PROVIDE THE COURSES
19 SPECIFIED IN SUB-SUBPARAGRAPHS (A) TO (C) OF SUBPARAGRAPH (I) OF
20 THIS PARAGRAPH (d) FOR A FEE.

21 (e) NOTWITHSTANDING THE LIFETIME-CREDIT-HOUR LIMITATION
22 ESTABLISHED PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (5), AN
23 ELIGIBLE UNDERGRADUATE STUDENT MAY APPLY TO THE COMMISSION FOR
24 A WAIVER OF THE LIMITATION. THE COMMISSION MAY GRANT A WAIVER
25 OF THE LIFETIME-CREDIT-HOUR LIMITATION IF IT FINDS:

26 (I) THAT EXTENUATING CIRCUMSTANCES EXIST RELATED TO THE
27 STUDENT'S HEALTH OR PHYSICAL ABILITY TO COMPLETE THE DEGREE

1 PROGRAM WITHIN THE LIFETIME-CREDIT-HOUR LIMIT;

2 (II) THAT THE DEGREE PROGRAM, AS APPROVED BY THE
3 COMMISSION, REQUIRES MORE THAN ONE HUNDRED TWENTY HOURS TO
4 COMPLETE;

5 (III) THAT, WHILE THE ELIGIBLE UNDERGRADUATE STUDENT WAS
6 ENROLLED IN A SPECIFIC DEGREE PROGRAM, THE COMMISSION APPROVED
7 AND THE INSTITUTION IMPLEMENTED AN ALTERATION OF DEGREE
8 REQUIREMENTS OR STANDARDS FOR THE SPECIFIC DEGREE; OR

9 (IV) THAT REQUIRING THE ELIGIBLE UNDERGRADUATE STUDENT TO
10 PAY THE FULL AMOUNT OF TOTAL IN-STATE TUITION FOR CREDIT HOURS
11 THAT EXCEED THE LIMITATION WOULD CAUSE A SUBSTANTIAL ECONOMIC
12 HARDSHIP ON THE STUDENT AND THE STUDENT'S FAMILY.

13 (6) IF AN ELIGIBLE UNDERGRADUATE STUDENT ENROLLS IN A CLASS
14 FOR WHICH THE STATE OR PARTICIPATING PRIVATE INSTITUTION OF HIGHER
15 EDUCATION RECEIVES A STIPEND PAYMENT PURSUANT TO SUBSECTION (5)
16 OF THIS SECTION AND THE ELIGIBLE UNDERGRADUATE STUDENT
17 SUBSEQUENTLY WITHDRAWS FROM THE CLASS ON OR PRIOR TO THE FINAL
18 DATE ON WHICH THE INSTITUTION PERMITS A STUDENT TO WITHDRAW
19 WITHOUT THE PAYMENT OF TUITION, THE INSTITUTION SHALL REIMBURSE
20 THE COLLEGE OPPORTUNITY FUND FOR THE PROPORTIONAL AMOUNT OF
21 THE STIPEND RECEIVED THAT CONFORMS TO THE GOVERNING BOARD'S
22 REFUND POLICY FOR THE CLASS FROM WHICH THE STUDENT WITHDREW.
23 THE CREDITS FOR WHICH THE STIPEND IS REFUNDED SHALL NOT COUNT
24 AGAINST THE ELIGIBLE UNDERGRADUATE STUDENT'S
25 LIFETIME-CREDIT-HOUR LIMITATION ESTABLISHED PURSUANT TO
26 PARAGRAPH (c) OF SUBSECTION (5) OF THIS SECTION.

27 (7) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE

1 AMOUNT OF A STIPEND RECEIVED BY A STATE INSTITUTION OF HIGHER
2 EDUCATION ON BEHALF OF AN ELIGIBLE UNDERGRADUATE STUDENT
3 PURSUANT TO THIS PART 2 SHALL NOT CONSTITUTE A GRANT FROM THE
4 STATE OF COLORADO PURSUANT TO SECTION 20 (2) (d) OF ARTICLE X OF
5 THE STATE CONSTITUTION.

6 **23-18-203. College opportunity fund - data retention.** (1) THE
7 COMMISSION, IN COOPERATION WITH THE STATE AND PARTICIPATING
8 PRIVATE INSTITUTIONS OF HIGHER EDUCATION, SHALL MAINTAIN A RECORD
9 OF THE NUMBER OF CREDIT HOURS FOR WHICH EACH ELIGIBLE
10 UNDERGRADUATE STUDENT RECEIVES A STIPEND FROM THE COLLEGE
11 OPPORTUNITY FUND. THE COMMISSION SHALL ALSO MAINTAIN ANY
12 CONFIDENTIAL INFORMATION CONCERNING ELIGIBLE UNDERGRADUATE
13 STUDENTS PARTICIPATING IN THE PROGRAM.

14 (2) THE COMMISSION, IN CONSULTATION WITH THE GOVERNING
15 BOARDS, SHALL DETERMINE BY POLICY WHEN TO FORWARD TO EACH STATE
16 AND PARTICIPATING PRIVATE INSTITUTION OF HIGHER EDUCATION A
17 REPORT ON THE NUMBER OF CREDIT HOURS ACCUMULATED BY EACH
18 ELIGIBLE UNDERGRADUATE STUDENT AGAINST THE LIFETIME-CREDIT-HOUR
19 LIMITATION ESTABLISHED PURSUANT TO SECTION 23-18-202 (5) (c). EACH
20 INSTITUTION SHALL MAKE THE INFORMATION ON THE NUMBER OF CREDIT
21 HOURS ACCUMULATED AGAINST THE LIMITATIONS AVAILABLE TO THE
22 STUDENT UPON REQUEST.

23 **23-18-204. College opportunity fund - directive.** THE
24 COLORADO STUDENT LOAN PROGRAM AND THE STATE TREASURER, IN
25 CONSULTATION WITH THE GOVERNING BOARDS, SHALL COOPERATIVELY
26 ESTABLISH A DISBURSEMENT SCHEDULE FOR STIPENDS AWARDED
27 PURSUANT TO THIS PART 2.

1 **23-18-205. College opportunity fund - legislative declaration**

2 **- commission report.** (1) THE GENERAL ASSEMBLY FINDS THAT:

3 (a) NO OTHER STATE HAS TRIED TO CHANGE THE FUNDING OF
4 INSTITUTIONS OF HIGHER EDUCATION FROM THE INSTITUTION TO THE
5 STUDENT AS PROVIDED FOR IN THIS PART 2;

6 (b) BECAUSE THIS PART 2 CREATES A NEW AND UNTRIED PROGRAM,
7 IT IS ANTICIPATED THAT DURING THE EARLY YEARS OF ITS
8 IMPLEMENTATION, THERE MAY BE SOME UNANTICIPATED EFFECTS
9 REQUIRING ADDITIONAL STATUTORY CHANGES.

10 (2) (a) BEGINNING JULY 1, 2006, AND CONTINUING THROUGH JULY
11 1, 2009, THE COMMISSION SHALL SUBMIT TO THE EDUCATION COMMITTEES
12 OF THE SENATE AND HOUSE OF REPRESENTATIVES AND TO THE JOINT
13 BUDGET COMMITTEE OF THE GENERAL ASSEMBLY ANNUAL REPORTS ON THE
14 STATUS OF THE PROGRAM ESTABLISHED PURSUANT TO THIS PART 2. THE
15 ANNUAL REPORTS MAY INCLUDE, BUT ARE NOT LIMITED TO,
16 RECOMMENDED STATUTORY CHANGES.

17 (b) ON OR BEFORE JULY 1, 2010, THE COMMISSION SHALL SUBMIT
18 A FINAL REPORT TO THE EDUCATION COMMITTEES OF THE SENATE AND
19 HOUSE OF REPRESENTATIVES AND TO THE JOINT BUDGET COMMITTEE OF
20 THE GENERAL ASSEMBLY ON THE IMPLEMENTATION OF THE PROGRAM
21 ESTABLISHED PURSUANT TO THIS PART 2.

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

25 **23-5-128. Governing boards - performance contract -**
26 **authorization - operations.** (1) AS USED IN THIS SECTION, UNLESS THE
27 CONTEXT OTHERWISE REQUIRES:

1 (a) "PRIVATE INSTITUTION OF HIGHER EDUCATION" SHALL HAVE
2 THE SAME MEANING AS PROVIDED IN SECTION 23-18-102 (11).

3 (b) "STATE INSTITUTION OF HIGHER EDUCATION" SHALL HAVE THE
4 SAME MEANING AS PROVIDED IN SECTION 23-18-102 (12).

5 (c) "UNFUNDED ENROLLMENT GROWTH" MEANS THE AMOUNT OF
6 ENROLLMENT GROWTH CALCULATED PURSUANT TO SUBSECTION (8) OF
7 THIS SECTION THAT HAS NOT BEEN FUNDED FOR EACH GOVERNING BOARD
8 FROM STATE FISCAL YEAR 2000-01 THROUGH 2004-05.

9 (2) (a) BEGINNING JULY 1, 2004, EACH GOVERNING BOARD OF A
10 STATE INSTITUTION OF HIGHER EDUCATION SHALL NEGOTIATE A
11 PERFORMANCE CONTRACT WITH THE DEPARTMENT OF HIGHER EDUCATION
12 THAT SHALL SPECIFY THE PERFORMANCE GOALS THE INSTITUTION SHALL
13 ACHIEVE DURING THE PERIOD THAT IT OPERATES UNDER THE
14 PERFORMANCE CONTRACT. A STATE INSTITUTION OF HIGHER EDUCATION'S
15 COMPLIANCE WITH THE GOALS SPECIFIED IN THE PERFORMANCE CONTRACT
16 MAY BE IN LIEU OF THE REQUIREMENTS OF ARTICLE 1 OF THIS TITLE AND
17 THE "HIGHER EDUCATION QUALITY ASSURANCE ACT", ARTICLE 13 OF THIS
18 TITLE, FOR THE PERIOD OF THE PERFORMANCE CONTRACT.

19 (b) IF A PRIVATE INSTITUTION OF HIGHER EDUCATION PLANS TO
20 ACCEPT STIPENDS PAID ON BEHALF OF ELIGIBLE UNDERGRADUATE
21 STUDENTS PURSUANT TO ARTICLE 18 OF THIS TITLE, THE PRIVATE
22 INSTITUTION OF HIGHER EDUCATION SHALL NEGOTIATE A PERFORMANCE
23 CONTRACT WITH THE DEPARTMENT OF HIGHER EDUCATION, WHICH SHALL
24 SPECIFY THE PERFORMANCE GOALS THE INSTITUTION SHALL ACHIEVE
25 DURING THE PERIOD THAT IT OPERATES UNDER THE PERFORMANCE
26 CONTRACT.

27 (c) THE SPECIFIED PROCEDURES AND GOALS SET FORTH IN THE

1 PERFORMANCE CONTRACT SHALL BE MEASURABLE AND TAILORED TO THE
2 ROLE AND MISSION OF EACH INSTITUTION THAT IS UNDER THE DIRECTION
3 AND CONTROL OF THE GOVERNING BOARD, AND MAY INCLUDE, BUT SHALL
4 NOT BE LIMITED TO:

5 (I) COLORADO RESIDENTS' ACCESS TO HIGHER EDUCATION;

6 (II) QUALITY;

7 (III) EFFICIENCY OF OPERATIONS; AND

8 (IV) THE NEEDS OF THE STATE.

9 (d) TO MEASURE PROGRESS TOWARD THE GOALS SPECIFIED IN THE
10 PERFORMANCE CONTRACT, THE FOLLOWING ISSUES MAY BE ADDRESSED:

11 (I) APPROPRIATE LEVELS OF STUDENT ENROLLMENT, TRANSFER,
12 RETENTION, AND GRADUATION RATES AND INSTITUTIONAL PROGRAMS
13 SPECIFICALLY DESIGNED TO ASSIST STUDENTS IN ACHIEVING THEIR
14 ACADEMIC AND, IN THE CASE OF COMMUNITY COLLEGES AND AREA
15 VOCATIONAL SCHOOLS, VOCATIONAL GOALS;

16 (II) STUDENT SATISFACTION AND STUDENT PERFORMANCE AFTER
17 GRADUATION, MEASURED BY INDICATORS APPROPRIATE TO THE
18 INSTITUTIONAL ROLE AND MISSION, SUCH AS EMPLOYMENT OR
19 ENROLLMENT IN GRADUATE PROGRAMS;

20 (III) COMPARATIVE COST AND PRODUCTIVITY DATA IN RELATION
21 TO PEER INSTITUTIONS;

22 (IV) ASSESSMENT OF THE QUALITY OF THE INSTITUTION'S
23 ACADEMIC AND, WHERE RELEVANT, VOCATIONAL PROGRAMS, INCLUDING
24 ASSESSMENT BY EXTERNAL REVIEWERS, SUCH AS ACCREDITATION BOARDS
25 AND EMPLOYERS, AND CONSIDERATION OF STUDENT PERFORMANCE ON
26 NATIONAL EXAMINATIONS; AND

27 (V) INCREASING FINANCIAL SUPPORT TO SUSTAIN AND ENHANCE

1 ESSENTIAL FUNCTIONS THAT MAY BE PARTIALLY STATE FUNDED,
2 INCLUDING BUT NOT LIMITED TO:

3 (A) THE PROVISION OF STUDENT FINANCIAL AID;

4 (B) IN THE CASE OF A STATE INSTITUTION OF HIGHER EDUCATION,
5 CAPITAL CONSTRUCTION;

6 (C) ASSESSMENT OF FINANCIAL INDICATORS COMPARED TO
7 NATIONAL BENCHMARKS COMMONLY USED TO MEASURE FINANCIAL
8 PERFORMANCE IN HIGHER EDUCATION ACCORDING TO THE TYPE OF
9 INSTITUTION; AND

10 (D) INCREASING FINANCIAL SUPPORT TO SUSTAIN AND ENHANCE
11 THE EDUCATIONAL MISSION OF THE INSTITUTION AND, IN THE CASE OF
12 INSTITUTIONS WITH A RESEARCH MISSION, INCREASING PUBLIC AND
13 PRIVATE RESEARCH CAPABILITIES AND COMPETITIVENESS.

14 (e) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (2) TO
15 THE CONTRARY, THE PROVISIONS OF THIS SUBSECTION (2) SHALL NOT
16 APPLY TO THE PERFORMANCE CONTRACT WITH THE COLORADO SCHOOL OF
17 MINES, AUTHORIZED BY SECTION 23-41-104.6, THAT IS IN PLACE ON JULY
18 1, 2004, UNTIL THE DEPARTMENT OF HIGHER EDUCATION RENEGOTIATES
19 THE PERFORMANCE CONTRACT WITH THE SCHOOL OF MINES, TO TAKE
20 EFFECT JULY 1, 2011.

21 (3) ALL PERFORMANCE CONTRACTS BETWEEN THE DEPARTMENT OF
22 HIGHER EDUCATION AND ANY STATE OR PRIVATE INSTITUTION OF HIGHER
23 EDUCATION SHALL BE REVIEWED AND APPROVED BY THE COLORADO
24 COMMISSION ON HIGHER EDUCATION BEFORE THE CONTRACT MAY BECOME
25 EFFECTIVE.

26 (4) NOTWITHSTANDING THE REQUIREMENTS OF ARTICLE 101 OF
27 TITLE 24, C.R.S., AND PART 11 OF ARTICLE 30 OF TITLE 24, C.R.S., A

1 GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER EDUCATION THAT
2 OPERATES PURSUANT TO A PERFORMANCE CONTRACT NEGOTIATED
3 PURSUANT TO THIS SECTION MAY NEGOTIATE WITH THE DEPARTMENT OF
4 HIGHER EDUCATION, AFTER APPROVAL FROM THE COLORADO COMMISSION
5 ON HIGHER EDUCATION, A PROVISION IN THE PERFORMANCE CONTRACT TO
6 ALLOW AN EXEMPTION FROM THE PROCUREMENT CODE, ARTICLE 101 OF
7 TITLE 24, C.R.S., AND THE CENTRAL STATE MOTOR VEHICLE FLEET
8 SYSTEM, PART 11 OF ARTICLE 30 OF TITLE 24, C.R.S. THE EXECUTIVE
9 DIRECTOR OF THE DEPARTMENT OF HIGHER EDUCATION SHALL
10 COMMUNICATE IN WRITING WITH THE EXECUTIVE DIRECTOR OF THE
11 DEPARTMENT OF PERSONNEL REGARDING ANY EXEMPTIONS GRANTED
12 PURSUANT TO THIS SUBSECTION (4).

13 (5) BEGINNING JANUARY 2006, AND EACH JANUARY THEREAFTER,
14 THE DEPARTMENT OF HIGHER EDUCATION SHALL REPORT TO THE MEMBERS
15 OF THE EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF
16 REPRESENTATIVES AND THE MEMBERS OF THE JOINT BUDGET COMMITTEE
17 OF THE GENERAL ASSEMBLY THE FINANCIAL EFFECT OF THE PROVISIONS OF
18 EACH PERFORMANCE CONTRACT WITH REGARD TO FUNDING FOR THE
19 AFFECTED GOVERNING BOARD OF A STATE INSTITUTION OF HIGHER
20 EDUCATION AND OVERALL FUNDING FOR THE STATEWIDE SYSTEM OF
21 HIGHER EDUCATION, ANY EXEMPTIONS GRANTED PURSUANT TO
22 SUBSECTION (4) OF THIS SECTION, AND A REVIEW OF EACH STATE OR
23 PRIVATE INSTITUTION'S OPERATIONS UNDER THE INSTITUTION'S
24 PERFORMANCE CONTRACT. THE TERM OF A PERFORMANCE CONTRACT MAY
25 BE UP TO TEN YEARS. THE DEPARTMENT OF HIGHER EDUCATION MAY
26 RENEW A PERFORMANCE CONTRACT AT ITS DISCRETION, WITH THE
27 AGREEMENT OF THE GOVERNING BOARD.

1 (6) WHILE OPERATING PURSUANT TO A PERFORMANCE CONTRACT
2 NEGOTIATED PURSUANT TO THIS SECTION, THE GOVERNING BOARD OF A
3 STATE INSTITUTION OF HIGHER EDUCATION:

4 (a) SHALL CONTINUE TO OPERATE AS THE GOVERNING BOARD FOR
5 THE INSTITUTION. IN ADDITION, AT THE REQUEST OF THE GOVERNING
6 BOARD, THE GOVERNOR MAY APPOINT ADDITIONAL ADVISORY MEMBERS
7 TO THE GOVERNING BOARD TO SUSTAIN AND ENHANCE THE ROLE AND
8 MISSION OF THE INSTITUTION. ADDITIONAL MEMBERS OF THE GOVERNING
9 BOARD SHALL SERVE AS NONVOTING MEMBERS OF THE BOARD. THE ROLE
10 OF THE ADVISORY MEMBERS SHALL BE TO IMPROVE THE GOVERNING
11 BOARD'S OPPORTUNITIES TO DEVELOP AND ENRICH THE ACADEMIC AND
12 RESEARCH PROGRAMS AT THE INSTITUTION.

13 (b) NEED NOT CONSULT WITH NOR OBTAIN APPROVAL FROM THE
14 COLORADO COMMISSION ON HIGHER EDUCATION TO CREATE, MODIFY, OR
15 ELIMINATE ACADEMIC AND VOCATIONAL PROGRAMS OFFERED BY THE
16 INSTITUTION, SO LONG AS SUCH CREATIONS, MODIFICATIONS, AND
17 ELIMINATIONS ARE CONSISTENT WITH THE INSTITUTION'S STATUTORY ROLE
18 AND MISSION. THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL
19 HAVE THE AUTHORITY TO OVERRIDE ANY CREATION OR MODIFICATION OF
20 AN ACADEMIC OR VOCATIONAL PROGRAM IF THE CHANGE MADE BY THE
21 GOVERNING BOARD IS INCONSISTENT WITH THE INSTITUTION'S STATUTORY
22 ROLE AND MISSION.

23 (c) CONSISTENT WITH THE PROVISIONS OF SECTION 23-1-105,
24 SHALL REPORT TO THE COLORADO COMMISSION ON HIGHER EDUCATION ITS
25 PLANS FOR ANY TUITION INCREASES FOR THE FOLLOWING ACADEMIC YEAR
26 FOR CONSIDERATION BY THE COMMISSION.

27 (7) WHILE OPERATING PURSUANT TO A PERFORMANCE CONTRACT

1 NEGOTIATED PURSUANT TO THIS SECTION, A STATE INSTITUTION OF HIGHER
2 EDUCATION SHALL:

3 (a) REMAIN ELIGIBLE FOR STATE-FUNDED CAPITAL CONSTRUCTION
4 PROJECTS AND CONTROLLED MAINTENANCE PROJECTS AS PROVIDED IN
5 SECTION 23-1-106;

6 (b) CONTINUE TO ADMIT COLORADO RESIDENT APPLICANTS WITHIN
7 THE REQUIREMENTS OF SECTION 23-1-113.5 WHO MEET THE ADMISSIONS
8 CRITERIA OF THE INSTITUTION.

9 (8) THE COLORADO COMMISSION ON HIGHER EDUCATION, IN
10 CONSULTATION WITH THE GOVERNING BOARDS, SHALL CALCULATE THE
11 AMOUNT OF UNFUNDED ENROLLMENT GROWTH. DURING THE PERIOD THAT
12 A GOVERNING BOARD IS OPERATING PURSUANT TO A PERFORMANCE
13 CONTRACT NEGOTIATED PURSUANT TO THIS SECTION, THE COLORADO
14 COMMISSION ON HIGHER EDUCATION MAY REQUEST, AS PART OF THE
15 ANNUAL BUDGET CYCLE, A GENERAL FUND APPROPRIATION FOR EACH
16 GOVERNING BOARD FOR THE AMOUNT OF UNFUNDED ENROLLMENT
17 GROWTH, TO THE EXTENT THAT THERE REMAINS AN AMOUNT OF
18 ENROLLMENT GROWTH THAT IS UNFUNDED FOR THE GOVERNING BOARD.

19 (9) THE COLORADO SCHOOL OF MINES, WHILE OPERATING UNDER
20 A PERFORMANCE CONTRACT PURSUANT TO SECTION 23-41-104.6, MAY
21 NEGOTIATE WITH THE COLORADO COMMISSION ON HIGHER EDUCATION FOR
22 EXEMPTIONS CONSISTENT WITH THE PROVISIONS OF SUBSECTION (4) OF
23 THIS SECTION.

24 (10) WHILE A STATE INSTITUTION OF HIGHER EDUCATION IS
25 OPERATING PURSUANT TO A PERFORMANCE CONTRACT NEGOTIATED
26 PURSUANT TO THIS SECTION, THE GENERAL ASSEMBLY RETAINS THE
27 AUTHORITY TO APPROVE TUITION SPENDING AUTHORITY FOR THE

1 GOVERNING BOARD OF THE INSTITUTION.

2 **23-5-129. Governing boards - fee-for-service contracts -**
3 **authorization.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
4 OTHERWISE REQUIRES:

5 (a) "COMMISSION" SHALL HAVE THE SAME MEANING AS PROVIDED
6 IN SECTION 23-18-102 (5).

7 (b) "DEPARTMENT" SHALL HAVE THE SAME MEANING AS PROVIDED
8 IN SECTION 23-18-102 (6).

9 (c) "STATE INSTITUTION OF HIGHER EDUCATION" SHALL HAVE THE
10 SAME MEANING AS PROVIDED IN SECTION 23-18-102 (12).

11 (2) BEGINNING JULY 1, 2005, THE GOVERNING BOARD OF A STATE
12 INSTITUTION OF HIGHER EDUCATION MAY ANNUALLY NEGOTIATE A
13 FEE-FOR-SERVICE CONTRACT WITH THE DEPARTMENT FOR THE DELIVERY
14 OF HIGHER EDUCATION SERVICES BY THE INSTITUTION TO THE RESIDENTS
15 OF THE STATE OF COLORADO. THESE SERVICES MAY INCLUDE, BUT NEED
16 NOT BE LIMITED TO:

17 (a) EDUCATIONAL SERVICES IN RURAL AREAS OR COMMUNITIES IN
18 WHICH THE COST OF DELIVERING THE EDUCATIONAL SERVICES IS NOT
19 SUSTAINED BY THE AMOUNT RECEIVED IN STUDENT TUITION;

20 (b) BASIC SKILLS COURSES, AS DEFINED IN SECTION 23-1-113 (1)
21 (b) (II) (A.7);

22 (c) EDUCATIONAL SERVICES ASSOCIATED WITH THE
23 "POSTSECONDARY ENROLLMENT OPTIONS ACT", ARTICLE 35 OF TITLE 22,
24 C.R.S.;

25 (d) EDUCATIONAL SERVICES ASSOCIATED WITH THE HIGH SCHOOL
26 FAST TRACK PROGRAM PURSUANT TO SECTION 22-34-101, C.R.S.;

27 (e) EDUCATIONAL SERVICES REQUIRED OF THE COMMISSION TO

1 MEET ITS OBLIGATIONS UNDER RECIPROCAL AGREEMENTS PURSUANT TO
2 SECTION 23-1-112;

3 (f) GRADUATE SCHOOL SERVICES;

4 (g) EDUCATIONAL SERVICES THAT MAY INCREASE ECONOMIC
5 DEVELOPMENT OPPORTUNITIES IN THE STATE; AND

6 (h) SPECIALIZED EDUCATIONAL SERVICES AND PROFESSIONAL
7 DEGREES, INCLUDING BUT NOT LIMITED TO THE AREAS OF DENTISTRY,
8 MEDICINE, VETERINARY MEDICINE, NURSING, LAW, FORESTRY, AND
9 ENGINEERING.

10 **SECTION 4.** Article 1 of title 23, Colorado Revised Statutes, is
11 amended BY THE ADDITION OF A NEW SECTION to read:

12 **23-1-109.7. Duties and powers of the commission with regard**
13 **to the provision of educational services.** (1) THE COMMISSION SHALL
14 BE RESPONSIBLE FOR ENSURING THE PROVISION OF SPECIFIC
15 POSTSECONDARY EDUCATIONAL SERVICES IN THE STATE. THESE
16 EDUCATIONAL SERVICES SHALL INCLUDE BUT NEED NOT BE LIMITED TO:

17 (a) EDUCATIONAL SERVICES IN RURAL AREAS OR COMMUNITIES IN
18 WHICH THE COST OF DELIVERING SUCH SERVICES IS NOT SUSTAINED BY THE
19 AMOUNT RECEIVED IN STUDENT TUITION;

20 (b) BASIC SKILLS COURSES, AS DEFINED IN SECTION 23-1-113 (1)

21 (b) (II) (A.7);

22 (c) EDUCATIONAL SERVICES ASSOCIATED WITH THE
23 "POSTSECONDARY ENROLLMENT OPTIONS ACT", ARTICLE 35 OF TITLE 22,
24 C.R.S.;

25 (d) EDUCATIONAL SERVICES ASSOCIATED WITH THE HIGH SCHOOL
26 FAST TRACK PROGRAM PURSUANT TO SECTION 22-34-101, C.R.S.;

27 (e) EDUCATIONAL SERVICES REQUIRED OF THE COMMISSION TO

1 MEET ITS OBLIGATIONS UNDER RECIPROCAL AGREEMENTS PURSUANT TO
2 SECTION 23-1-112;

3 (f) GRADUATE SCHOOL SERVICES;

4 (g) EDUCATIONAL SERVICES THAT MAY INCREASE ECONOMIC
5 DEVELOPMENT OPPORTUNITIES IN THE STATE; AND

6 (h) SPECIALIZED EDUCATIONAL SERVICES AND PROFESSIONAL
7 DEGREES, INCLUDING BUT NOT LIMITED TO THE AREAS OF DENTISTRY,
8 MEDICINE, VETERINARY MEDICINE, NURSING, LAW, FORESTRY, AND
9 ENGINEERING.

10 (2) THE DEPARTMENT OF HIGHER EDUCATION ON BEHALF OF THE
11 COMMISSION MAY ANNUALLY ENTER INTO FEE-FOR-SERVICE CONTRACTS
12 WITH ONE OR MORE GOVERNING BOARDS OF INSTITUTIONS OF HIGHER
13 EDUCATION TO PROVIDE THE HIGHER EDUCATION SERVICES SPECIFIED IN
14 SUBSECTION (1) OF THIS SECTION. THE DEPARTMENT OF HIGHER
15 EDUCATION MAY CONTRACT WITH A GOVERNING BOARD OF AN
16 INSTITUTION OF HIGHER EDUCATION ONLY TO THE EXTENT THAT THE
17 CONTRACT REMAINS CONSISTENT WITH ANY CONTRACT ENTERED INTO
18 PURSUANT TO SECTION 23-5-128 WITH THE GOVERNING BOARD.

19 (3) THE COMMISSION SHALL MAKE ANNUAL FUNDING
20 RECOMMENDATIONS TO THE GENERAL ASSEMBLY AND THE GOVERNOR
21 REGARDING THE FUNDING NECESSARY FOR THE DEPARTMENT OF HIGHER
22 EDUCATION TO CONTRACT ON THE COMMISSION'S BEHALF FOR THE
23 PROVISION OF HIGHER EDUCATION SERVICES IN THE STATE, INCLUDING BUT
24 NOT LIMITED TO THE SERVICES SPECIFIED IN SUBSECTION (1) OF THIS
25 SECTION. THE GENERAL ASSEMBLY SHALL ANNUALLY APPROPRIATE TO
26 THE COMMISSION AN AMOUNT OF GENERAL FUND MONEYS TO CARRY OUT
27 THE PURPOSES OF THIS SECTION.

1 **SECTION 5.** 23-1-113.3 (2) (a), Colorado Revised Statutes, is
2 amended to read:

3 **23-1-113.3. Commission directive - basic skills courses.**

4 (2) (a) Adams state college, Mesa state college, any local community
5 college, and any community college governed by the state board for
6 community colleges and occupational education may offer and receive
7 ~~course-reimbursement~~ FEE-FOR-SERVICE CONTRACT payments from the
8 state for basic skills courses, as defined in section 23-1-113 (1) (b) (II)
9 (A.7).

10 **SECTION 6.** 24-1-114 (5) (b), Colorado Revised Statutes, is
11 amended to read:

12 **24-1-114. Department of higher education - creation.**

13 (5) (b) With respect to the Colorado commission on higher education and
14 the universities, colleges, and boards specified in subsection (4) of this
15 section, the executive director shall have only those powers, duties, and
16 functions prescribed in article 1 of title 23, C.R.S.; EXCEPT THAT THE
17 EXECUTIVE DIRECTOR OF THE COLORADO COMMISSION ON HIGHER
18 EDUCATION IS AUTHORIZED TO NEGOTIATE, IMPLEMENT, AND MONITOR
19 CONTRACTS, AS DESCRIBED IN SECTIONS 23-5-128 AND 23-5-129, C.R.S.,
20 WITH UNIVERSITIES, COLLEGES, AND BOARDS, IN CONSULTATION WITH THE
21 COLORADO COMMISSION ON HIGHER EDUCATION.

22 **SECTION 7.** 23-1-104 (1) (a) (I) and (1) (d), Colorado Revised
23 Statutes, are amended to read:

24 **23-1-104. Financing the system of postsecondary education -**

25 **repeal.** (1) (a) (I) The general assembly shall make annual
26 appropriations of general fund moneys, ~~and~~ of cash funds received from
27 tuition income, ~~pursuant to the provisions of section 23-1-103.5~~ AND OF

1 CASH FUNDS EXEMPT THAT ARE ESTIMATED TO BE RECEIVED BY AN
2 INSTITUTION, UNDER THE DIRECTION AND CONTROL OF THE GOVERNING
3 BOARD, AS STIPENDS, AS DEFINED IN SECTION 23-18-102, as a single line
4 item to each governing board for the operation of its campuses. ~~consistent~~
5 ~~with the distribution percentages developed by the commission pursuant~~
6 ~~to section 23-1-105 (3). Except as otherwise provided in subsection (1.5)~~
7 ~~of this section, each governing board shall allocate said appropriations to~~
8 ~~the institutions under its control in the manner deemed most appropriate~~
9 ~~by such governing board.~~

10 (d) ~~The formulas established pursuant to this section shall exclude~~
11 ~~consideration of the programs authorized pursuant to article 15 of title 26,~~
12 ~~C.R.S.~~

13 **SECTION 8.** Article 5 of title 23, Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW SECTION to read:

15 **23-5-101.7. Enterprise status of institutions of higher**
16 **education.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
17 OTHERWISE REQUIRES, "INSTITUTION OF HIGHER EDUCATION" OR
18 "INSTITUTION" MEANS THE COLORADO STATE UNIVERSITY - PUEBLO,
19 ADAMS STATE COLLEGE, MESA STATE COLLEGE, METROPOLITAN STATE
20 COLLEGE OF DENVER, FORT LEWIS COLLEGE, WESTERN STATE COLLEGE
21 OF COLORADO, THE UNIVERSITY OF NORTHERN COLORADO, COLORADO
22 SCHOOL OF MINES, THE UNIVERSITY OF COLORADO, COLORADO STATE
23 UNIVERSITY, AND ALL COMMUNITY COLLEGES GOVERNED BY THE STATE
24 BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION.

25 (2) AN INSTITUTION OF HIGHER EDUCATION, OR A GROUP OF
26 INSTITUTIONS OF HIGHER EDUCATION THAT IS MANAGED BY A SINGLE
27 GOVERNING BOARD, MAY BE DESIGNATED AS AN ENTERPRISE FOR THE

1 PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO
2 LONG AS THE GOVERNING BOARD OF THE INSTITUTION OR GROUP OF
3 INSTITUTIONS RETAINS AUTHORITY TO ISSUE REVENUE BONDS ON BEHALF
4 OF THE INSTITUTION OR GROUP OF INSTITUTIONS AND THE INSTITUTION OR
5 GROUP OF INSTITUTIONS RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL
6 ANNUAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL
7 GOVERNMENTS COMBINED. SO LONG AS IT IS DESIGNATED AS AN
8 ENTERPRISE PURSUANT TO THE PROVISIONS OF THIS SECTION, AN
9 INSTITUTION OR GROUP OF INSTITUTIONS SHALL NOT BE SUBJECT TO ANY
10 OF THE PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE
11 CONSTITUTION.

12 (3) IN PLEDGING REVENUES FOR THE REPAYMENT OF REVENUE
13 BONDS ISSUED ON BEHALF OF AN INSTITUTION OF HIGHER EDUCATION OR
14 GROUP OF INSTITUTIONS OF HIGHER EDUCATION THAT IS DESIGNATED AS AN
15 ENTERPRISE, THE INSTITUTION OR GROUP OF INSTITUTIONS MAY PLEDGE
16 INTERNAL REVENUES ONLY IF THE INSTITUTION OR GROUP OF
17 INSTITUTIONS:

18 (a) IS ACCOUNTED FOR SEPARATELY IN INSTITUTIONAL FINANCIAL
19 RECORDS; AND

20 (b) ENGAGES IN THE TYPE OF ACTIVITIES THAT ARE COMMONLY
21 CARRIED ON FOR PROFIT OUTSIDE THE PUBLIC SECTOR.

22 (4) (a) THE GOVERNING BOARD OF AN INSTITUTION OF HIGHER
23 EDUCATION MAY, BY RESOLUTION, DESIGNATE AN INSTITUTION OF HIGHER
24 EDUCATION OR GROUP OF INSTITUTIONS OF HIGHER EDUCATION MANAGED
25 BY THE GOVERNING BOARD AS AN ENTERPRISE SO LONG AS THE
26 INSTITUTION OR GROUP OF INSTITUTIONS MEETS THE REQUIREMENTS FOR
27 AN ENTERPRISE STATED IN SUBSECTION (2) OF THIS SECTION. EXCEPT AS

1 PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), ANY SUCH
2 ENTERPRISE DESIGNATION SHALL NOT TERMINATE, EXPIRE, OR BE
3 RESCINDED AS LONG AS THE INSTITUTION OR GROUP OF INSTITUTIONS
4 MEETS THE REQUIREMENTS FOR AN ENTERPRISE.

5 (b) ALL RESOLUTIONS ADOPTED PURSUANT TO PARAGRAPH (a) OF
6 THIS SUBSECTION (4) SHALL BE SUBMITTED BY THE ADOPTING GOVERNING
7 BOARD TO THE OFFICE OF THE STATE AUDITOR IN THE FORM AND MANNER
8 PRESCRIBED BY THE LEGISLATIVE AUDIT COMMITTEE. THE DESIGNATIONS
9 SHALL BE REVIEWED BY THE OFFICE OF THE STATE AUDITOR TO DETERMINE
10 WHETHER THE DESIGNATIONS ARE WITHIN THE AUTHORITY OF THE
11 ADOPTING GOVERNING BOARD PURSUANT TO THE PROVISIONS OF THIS
12 SECTION AND FOR LATER REVIEW BY THE LEGISLATIVE AUDIT COMMITTEE
13 FOR ITS OPINION AS TO WHETHER THE DESIGNATIONS CONFORM WITH THE
14 PROVISIONS OF THIS SECTION. THE OFFICIAL CERTIFICATE OF THE STATE
15 AUDITOR AS TO THE FACT OF SUBMISSION OR THE DATE OF SUBMISSION OF
16 A DESIGNATION AS SHOWN BY THE RECORDS OF THE OFFICE OF THE STATE
17 AUDITOR, AS WELL AS TO THE FACT OF NONSUBMISSION AS SHOWN BY THE
18 NONEXISTENCE OF SUCH RECORDS, SHALL BE RECEIVED AND HELD IN ALL
19 CIVIL CASES AS COMPETENT EVIDENCE OF THE FACTS CONTAINED THEREIN.
20 A DESIGNATION ADOPTED BY A GOVERNING BOARD OF AN INSTITUTION OR
21 GROUP OF INSTITUTIONS OF HIGHER EDUCATION WITHOUT BEING
22 SUBMITTED WITHIN TWENTY DAYS AFTER ADOPTION TO THE OFFICE OF THE
23 STATE AUDITOR FOR REVIEW BY THE OFFICE AND BY THE LEGISLATIVE
24 AUDIT COMMITTEE SHALL BE VOID.

25 (5) NOTWITHSTANDING ANY PROVISION OF SECTION 23-1-106 OR
26 SECTION 24-75-303 (3), C.R.S., TO THE CONTRARY, THE GOVERNING
27 BOARD OF AN INSTITUTION OF HIGHER EDUCATION OR GROUP OF

1 INSTITUTIONS OF HIGHER EDUCATION THAT HAS BEEN DESIGNATED AS AN
2 ENTERPRISE PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL HAVE
3 THE EXCLUSIVE AUTHORITY TO APPROVE CASH FUNDED CAPITAL
4 EXPENDITURES WITHIN THE INSTITUTION OR GROUP OF INSTITUTIONS FOR
5 PROJECTS THAT ARE TO BE CONSTRUCTED, OPERATED, AND MAINTAINED
6 SOLELY FROM STUDENT FEES, WHOLLY ENDOWED GIFTS AND BEQUESTS,
7 RESEARCH BUILDING REVOLVING FUNDS, OR A COMBINATION OF SUCH
8 SOURCES.

9 **SECTION 9.** 23-5-101.5 (2) (b) (II), Colorado Revised Statutes,
10 is amended to read:

11 **23-5-101.5. Enterprise status of auxiliary facilities.** (2) As
12 used in this ~~article~~ SECTION AND SECTIONS 23-5-102 TO 23-5-105.5:

13 (b) (II) "Grant" does not include:

14 (A) Any indirect benefit conferred upon an auxiliary facility, OR
15 GROUP OF AUXILIARY FACILITIES OR AN INSTITUTION OR GROUP OF
16 INSTITUTIONS from the state or any local government in Colorado,
17 INCLUDING ANY INTEREST IN OR USE OF EXISTING FACILITIES OWNED,
18 FUNDED, OR FINANCED BY THE GOVERNING BOARD OF AN INSTITUTION, THE
19 STATE, OR ANY LOCAL GOVERNMENT IN COLORADO;

20 (B) Any revenues resulting from MARKET EXCHANGES SUCH AS
21 rates, fees, assessments, TUITIONS, or other charges imposed by an
22 auxiliary facility, OR GROUP OF AUXILIARY FACILITIES OR BY AN
23 INSTITUTION OR GROUP OF INSTITUTIONS for the provision of goods or
24 services by such auxiliary facility, GROUP OF AUXILIARY FACILITIES,
25 INSTITUTION OR GROUP OF INSTITUTIONS, including SERVICES TO THE
26 STATE OR A LOCAL GOVERNMENT IN COLORADO AND fees paid to the
27 auxiliary facility OR GROUP OF AUXILIARY FACILITIES for internal services

1 provided to the institution of higher education with which the auxiliary
2 facility is associated;

3 (C) Any federal funds, regardless of whether such federal funds
4 pass through the state or any local government in Colorado prior to
5 receipt by an auxiliary facility, GROUP OF AUXILIARY FACILITIES,
6 INSTITUTION, OR GROUP OF INSTITUTIONS;

7 (D) FEES RECEIVED BY AN INSTITUTION PURSUANT TO A
8 FEE-FOR-SERVICE CONTRACT BETWEEN THE DEPARTMENT OF HIGHER
9 EDUCATION AND THE INSTITUTION OR THE INSTITUTION'S GOVERNING
10 BOARD;

11 (E) REVENUES RECEIVED BY AN INSTITUTION OR GROUP OF
12 INSTITUTIONS THAT HAVE BEEN PAID ON BEHALF OF AN ELIGIBLE
13 UNDERGRADUATE STUDENT FROM THE COLLEGE OPPORTUNITY FUND
14 PURSUANT TO ARTICLE 18 OF THIS TITLE.

15 **SECTION 10.** 23-5-102, Colorado Revised Statutes, is amended
16 to read:

17 **23-5-102. Funding for auxiliary facilities - institutions of higher**
18 **education - loans - bonds.** (1) For the purpose of obtaining funds for
19 constructing, otherwise acquiring, and equipping auxiliary facilities for
20 the use of students and employees at any state educational institution or
21 any branch thereof OR FACILITIES FOR USE BY ANY INSTITUTION OR GROUP
22 OF INSTITUTIONS THAT ARE DESIGNATED AS AN ENTERPRISE PURSUANT TO
23 SECTION 23-5-101.7 and for the acquisition of land for such purposes, the
24 governing board of any state educational institution is authorized, after
25 notification to the commission on higher education, to enter into contracts
26 with any person, corporation, or state or federal government agency for
27 the advancement of money for such purposes and providing for the

1 repayment of such advancements with interest at a specified net effective
2 interest rate.

3 (2) The governing ~~body~~ BOARD of any institution of higher
4 education by resolution may issue revenue bonds on behalf of any
5 auxiliary facility or group of auxiliary facilities OR ON BEHALF OF ANY
6 INSTITUTION OR GROUP OF INSTITUTIONS managed by such governing ~~body~~
7 BOARD for the purpose of obtaining funds for constructing, otherwise
8 acquiring, equipping, or operating such auxiliary facility or group of
9 auxiliary facilities OR FOR FACILITIES FOR SUCH INSTITUTION OR GROUP OF
10 INSTITUTIONS. Any bonds issued on behalf of any auxiliary facility or
11 group of auxiliary facilities, other than housing facilities, dining facilities,
12 recreational facilities, health facilities, parking facilities, research
13 facilities ~~which~~ THAT are funded from a revolving fund, or designated
14 enterprise auxiliary facilities listed in section 23-5-101.5 (4) may be
15 issued only after approval by both houses of the general assembly either
16 by bill or by joint resolution and after approval by the governor in
17 accordance with section 39 of article V of the state constitution. THE
18 GOVERNING BOARD OF AN INSTITUTION OR GROUP OF INSTITUTIONS THAT
19 ISSUES BONDS ON BEHALF OF THE INSTITUTION OR GROUP OF INSTITUTIONS,
20 WHICH IS DESIGNATED AS AN ENTERPRISE PURSUANT TO SECTION
21 23-5-101.7, SHALL FILE NOTICE OF SUCH ISSUANCE WITH THE COLORADO
22 COMMISSION ON HIGHER EDUCATION. Bonds issued pursuant to this
23 subsection (2) shall be payable only from revenues generated by the
24 auxiliary facility or group of auxiliary facilities OR BY THE INSTITUTION
25 OR GROUP OF INSTITUTIONS on behalf of which such bonds are issued;
26 except that, subject to section 23-1-123 (5) (a) (III) and (5) (b) (II),
27 revenues generated by a designated enterprise ~~auxiliary facility~~ that is

1 associated with the university of Colorado may be pledged for the
2 repayment of bonds issued by another designated enterprise auxiliary
3 facility ~~which~~ THAT is not part of the same enterprise. Such bonds shall
4 be issued in accordance with the provisions of section 23-5-103 (2). The
5 termination, rescission, or expiration of the enterprise designation of any
6 auxiliary facility or group of auxiliary facilities pursuant to section
7 23-5-101.5 (3) OR OF ANY INSTITUTION OR GROUP OF INSTITUTIONS shall
8 not adversely affect the validity of or security for any revenue bonds
9 issued on behalf of ~~such~~ ANY auxiliary facility or group of auxiliary
10 facilities OR ON BEHALF OF ANY INSTITUTION OR GROUP OF INSTITUTIONS.

11 **SECTION 11.** 23-5-103 (1), Colorado Revised Statutes, is
12 amended to read:

13 **23-5-103. Pledge of income.** (1) The governing board of any one
14 or more state educational institutions, including, but not limited to, the
15 state colleges under the control and operation of their respective boards
16 of trustees, ~~which~~ THAT enters into such a contract for the advancement
17 of moneys is authorized, in connection with or as a part of such contract,
18 to pledge the net income derived or to be derived from such land or
19 facilities so constructed, acquired, and equipped as security for the
20 repayment of the moneys advanced therefor, together with interest
21 thereon, and for the establishment and maintenance of reserves in
22 connection therewith; and, for the same purpose, any such governing
23 board is also authorized, subject to the limitations specified in section
24 23-1-123 (5), to pledge the net income derived or to be derived from
25 other ~~auxiliary facilities which are not individually designated as~~
26 ~~enterprises and which~~ FACILITIES THAT ARE INCLUDED IN A DESIGNATED
27 ENTERPRISE OR, IF NOT INCLUDED, OTHER FACILITIES THAT are not

1 acquired and not to be acquired with moneys appropriated to the
2 institution by the state of Colorado, and to pledge the net income, fees,
3 and revenues derived from such sources, if unpledged, or, if pledged, the
4 net income, fees, and revenues currently in excess of the amount required
5 to meet principal, interest, and reserve requirements in connection with
6 outstanding obligations to which such net income, fees, and revenues
7 have theretofore been pledged. If the contract for the advancement of
8 moneys is entered into by the university of Colorado on behalf of a
9 designated enterprise auxiliary facility that is associated with the
10 university of Colorado, the board of regents is authorized to pledge only
11 the net income, including fees and revenues derived or to be derived from
12 the designated enterprise auxiliary facility and any other designated
13 enterprise auxiliary facilities.

14 **SECTION 12.** 24-77-102 (16) (b), Colorado Revised Statutes, is
15 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

16 **24-77-102. Definitions - repeal.** As used in this article, unless
17 the context otherwise requires:

18 (16) (b) "State" does not include:

19 (I.5) AN INSTITUTION OR GROUP OF INSTITUTIONS OF HIGHER
20 EDUCATION THAT HAS BEEN DESIGNATED AS AN ENTERPRISE PURSUANT TO
21 SECTION 23-5-101.7, C.R.S.;

22 **SECTION 13.** 24-36-120 (4), Colorado Revised Statutes, is
23 amended to read:

24 **24-36-120. Authority to assess transaction fees.** (4) The state
25 treasurer shall not assess a fee for an eligible transaction involving any of
26 the following funds:

27 (a) The state education fund created in section 17 (4) of article IX

- 1 of the state constitution;
2 (b) The highway users tax fund created in section 43-4-201,
3 C.R.S.;
4 (c) The great outdoors Colorado trust fund created in section 2 of
5 article XXVII of the state constitution;
6 (d) The public school fund described in section 3 of article IX of
7 the state constitution;
8 (e) The old age pension fund created in section 1 of article XXIV
9 of the state constitution; and
10 (f) Any other fund against which the assessment of a fee would
11 be contrary to the state constitution; AND
12 (g) THE COLLEGE OPPORTUNITY FUND CREATED IN ARTICLE 18 OF
13 TITLE 23, C.R.S.

14 **SECTION 14. Repeal.** 23-1-104 (1.5) and (2) and 23-1-105 (2)
15 and (3), Colorado Revised Statutes, are repealed.

16 **SECTION 15. Effective date.** This act shall take effect July 1,
17 2004.

18 **SECTION 16. Safety clause.** The general assembly hereby
19 finds, determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.