

**Legislation to Modify the Law
for Designating Higher Education
Auxiliary Facilities as TABOR Enterprises**

What Would This Bill Do?

This bill would amend Section 23-5-101.5, C.R.S., to prevent specified higher education auxiliary facilities from losing their TABOR enterprise designation. The bill deletes existing language that refers to a specific expiration date and adds language that allows continuation of a designation as long as the enterprise meets TABOR requirements.

Why is This Bill Necessary?

In 1993, the General Assembly enacted this statute to permit a higher education governing board to designate specific auxiliary facilities (e.g., student housing and parking facilities) as enterprises. The revenue earned by these enterprises can be excluded from TABOR revenue calculations. In 2004, the General Assembly enacted separate legislation (Section 23-5-101.7, C.R.S.), to enable a higher education governing board to designate its entire institution as a TABOR-exempt enterprise. In 2004 and 2005, the Legislative Audit Committee approved the designations of all state colleges and universities as TABOR enterprises.

Final determination of whether a designated enterprise meets TABOR requirements is made after the close of each fiscal year. Each year, the Office of the State Auditor reviews and prepares a report on whether higher education enterprise designations meet TABOR requirements. For Fiscal Year 2008, two institutions (Mesa State and Western State Colleges) did not qualify for institutional enterprise status because they received 10 percent or more of their annual revenue in state support. Three institutions (Adams State, Fort Lewis, and Mesa State Colleges) are projected not to qualify for enterprise status for Fiscal Year 2009. When colleges or universities lose their institutional enterprise status, their auxiliary facilities may still qualify for TABOR enterprise status. Therefore, retaining designations of auxiliary facilities as TABOR enterprises will enable the State in such instances to exclude these facilities from TABOR revenue and spending limitations.

The bill does not change statutory provisions that require the Office of the State Auditor to review a new designation and present its findings to the Legislative Audit Committee. If the Legislative Audit Committee approves the new designation, the Committee shall continue to be required to submit such designation and proposed legislation to the General Assembly for inclusion of the designation in statute. It should be noted that there are two new auxiliary facility enterprise designations that governing boards for Mesa State College and Fort Lewis College plan to submit to the Office of the State Auditor during the 2009 Legislative Session. If the Committee approves the new designations, the bill can be amended later in the session to include them in statute.

Comments:

The Department of Higher Education and all affected higher education institutions agree with the need to retain the auxiliary facility enterprise designations.