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0590 Fiscal Stability Commission

Colorado Legislative Council

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Report to the Colorado General Assembly

Fiscal Stability Commission

Prepared by

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Fiscal Stability Commission

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December 2009

To Members of the Sixty-seventh General Assembly:

Submitted herewith is the final report of the Fiscal Stability Commission, created pursuant to Senate Joint Resolution 09-044. The purpose of the commission is to study the fiscal stability of the state, including but not limited to solutions for the economy, higher education funding, state transportation funding, and affordable access to health care.

At its meeting on November 10, 2009, the Legislative Council reviewed the report of this commission. A motion to forward this report and the bills therein for consideration in the 2010 session was approved.

Respectfully submitted,

/s/ Senator Brandon Shaffer
Chair

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This report is also available on line at:

http://www.colorado.gov/lcs/FiscalStabilityCommission

Executive Summary

Commission Charge

Pursuant to Senate Joint Resolution 09-044, the Fiscal Stability Commission is charged with studying the fiscal stability of the state, including but not limited to:

- solutions for higher education and transportation funding;
- affordable access to health care;
- kindergarten through twelfth grade education;
- state-owned assets; and
- the creation and adequate funding of a state rainy day fund.

The commission is also charged with developing a strategic plan for state fiscal stability that may be amended yearly to reflect existing economic realities and to consider other needed issues.

Commission Activities

The Fiscal Stability Commission held 11 meetings during the 2009 interim. The meetings focused on Colorado's revenue structure, fiscal policies in the state constitution, services provided by state government, and the cost drivers and budgets of major state programs. The commission heard testimony and presentations by legislative staff, regional economists, university spokespersons, representatives of state agencies and local governments, economic development organizations, businesses, educational institutions, trade groups, environmental groups, and other interested parties.

The commission's first meetings were devoted to providing the members with a broad overview of the state's budget issues from a variety of perspectives. Following these first sessions, the commission spent two meetings engaged in round-table dialogues discussing the core values the members shared regarding the characteristics of an ideal state in which to live, the vision the commission had for Colorado's future, and the role of government in this future.

At subsequent meetings, the commission focused in greater detail on the state's core programs. The commission engaged department staff with the following three questions:

- What is the department's current funding level and what consequences, if any, have there been to the department's mission as a result of budget cuts?
- What minimum funding level is needed to maintain the department's current level of services?
- What is the "ideal" funding level needed to provide the highest quality services for the people of Colorado?

The funding levels developed by the commission as a result of these discussions follow. At its final meetings, the commission reviewed commonly discussed themes and members discussed their views of the state's fiscal issues and possible solutions. The commission chair noted that the commission's broad work would serve as a foundation for further discussion across the state that could ultimately lead to measures to ensure the state's long-term fiscal stability.

The commission heard testimony on the volatility of the state revenue structure and the benefits of creating a rainy day fund. As a result of this testimony, the commission recommends Bill B, which replaces the current General Fund reserve with a Budget Stabilization Reserve Fund and that gradually increases the fund level over time to 15 percent of General Fund appropriations. Under current law, the General Fund reserve is scheduled to increase from 4.0 percent in FY 2012-13 to 6.5 percent by FY 2016-17, subject to a trigger on personal income growth in Colorado. Because of the current budget shortfall, the reserve is temporarily equal to 2.0 percent of General Fund appropriations.

The commission heard testimony on a wide spectrum of opinions related to the state's tax structure and constitutional fiscal policies. A spokesperson from the University of Denver noted that it has been 50 years since a comprehensive tax study was completed in Colorado. As a result of this testimony, the commission recommends two resolutions. Concurrent Resolution D refers a measure to the voters asking for the creation of a commission charged with reviewing the state's constitutional fiscal policies and empowered to refer constitutional measures to the ballot. Joint Resolution E requests a comprehensive study of the state's revenue structure and fiscal policies.

The commission discussed the potential for public agencies to partner with the private and nonprofit sectors to increase efficiencies in state programs. As a result, the commission recommends Bill C, which permits state agencies to consider proposals for "public-private initiatives," or agreements between a state agency and a nonprofit organization.

Commission discussions and recommendations related to major state programs follows.

Transportation. The commission received testimony from private citizens, representatives of local governments, and the Department of Transportation on issues related to transportation construction, historical transportation revenue and spending, the current budget outlook, and future transportation-related revenue and spending needs. The commission discussed potential new or expanded transportation revenue sources including a gas tax increase, bonding, fees for vehicle miles traveled, tolling, and leveraging public-private partnerships.

The current department budget for FY 2009-10 totals $973.5 million. Department representatives noted that to maintain the current transportation system, the annual funding need is $1.5 billion. Based on the recommendations of the Governor's Blue Ribbon Panel on Transportation Finance and Implementation, "ideal" transportation funding is $2.5 billion annually. This amount could fund transportation infrastructure consistent with the panel's vision for 2050.

Capital construction. The commission heard testimony about capital construction and controlled maintenance for state-owned facilities from legislative staff, the chair of the Capital Development Committee, and the Colorado State Architect. The commission was presented with a five-year funding history for capital construction and controlled maintenance, and a brief history of revenue available for capital projects. Staff explained that there is presently no significant, dedicated funding stream for future capital projects.

The commission considered a recommendation made by the Office of the State Architect that between 2 and 4 percent, or $152.4 million to $304.8 million, of the current replacement value of the state's existing General Fund building inventory be appropriated annually to maintain and improve facilities. The commission also heard testimony about annual lease payments for certificates of participation (COP), another area of capital need.

The current level of funding for capital construction totals $481 million, of which 75.1 million (16 percent) is from the General Fund. An "ideal" funding level of $834 million would allow the state to fund annual COP payments, the full 4 percent of the current replacement value of all General Fund buildings to maintain and improve the state's existing inventory, and newly requested facilities and information technology upgrades for state departments and higher education institutions.

K-12 education. Representatives from educational organizations, private citizens, and the Colorado Department of Education (CDE) provided testimony regarding K-12 education in Colorado. The commission reviewed educational outcomes and performance measures, existing programs, and the school finance funding structure. The discussion focused on whether available resources were adequate to educate all students at the expected proficiency level. CDE discussed options to offer more high-outcome programs by eliminating less efficient programs and testified that the state's current tax structure falls short of supporting all public education programs.

K-12 education was appropriated $8.2 billion in FY 2009-10 from state, local, and federal sources. State General Fund appropriations total $3.2 billion (39.6 percent). An additional $1.2 billion is required to bring school funding up to the national average, while the "ideal" educational system would require $2.8 billion more than current funding levels, according to CDE. Among other things, the ideal educational system would fund teacher salaries at the national average and provide full-day kindergarten at all schools, and half-day preschool to all four-year-old children.

Judicial. The commission was provided an overview of the Judicial Department, which oversees the state's court system, administers the state probation system, and houses three independent agencies: the Public Defender's Office, the Office of Alternate Defense Counsel, and the Office of the Child's Representative. The department discussed recently implemented programs and efficiencies. The department emphasized the difficulty it has making budget cuts as 88 percent of its budget is personnel. Therefore, furlough days or staff reductions are the only option when faced with budget cuts.

For FY 2009-10, the Judicial Department was appropriated $451 million, with $336 million (74.5 percent) coming from the General Fund. According to the department, about $46 million additional dollars, or about $497 million in total, is needed to restore recent cuts, address the current backlog in cases, and provide quality service. "Ideally," the department requires total funding of $535 million, which would help enable it to create a rainy day fund to address future budget shortfalls. Currently, there are 216 vacant positions in the department.

Higher education. Private citizens and representatives from the Colorado Commission on Higher Education (CCHE), the Department of Higher Education, and the state's institutions of higher education addressed the commission. Discussion focused on the current funding and governance structures for higher education. Information on degree programs, enrollment, graduation rates, and the ethnic minority gap in post-secondary educational attainment was also presented.

The commission discussed several proposals to give schools flexibility to respond to recent General Fund budget cuts, including privatization and granting institutions more control over tuition, financial aid, negotiation of capital projects, and the ratio of resident, non-resident, and international enrollment. As a result, the commission recommends Bill A, which would grant higher education institutions greater flexibility in many areas relating to their operations and administration. Institutions would be granted more control over formulating articulation agreements between institutions, the ratio of foreign to resident students enrolled at their schools, the distribution of financial aid, accounting and information technology procedures, and the maintenance and construction of infrastructure.

The FY 2009-10 total budget for the department is $2.8 billion, of which $661 – 24 percent – is appropriated from the General Fund. The department's total budget also includes $585 million in funds that are appropriated more than once. Because of the current budget situation, the Governor has allocated money from the American Recovery and Reinvestment Act (ARRA) to higher education. This amount is currently expected to be $231 million and could go as high as $377 million. In order to maintain the current level of services in the future, it is estimated higher education will require additional revenue equal to the amount of dollars supplied by ARRA. For an "ideal" budget, the department indicated it would require an additional $981 million over current funding levels.

Corrections. The Department of Corrections briefed the commission on its services and budget. The department's main budget drivers include inmate and parole population growth, changes to criminal laws, and capacity issues. Currently, the department has 23,000 inmates, operates 22 state facilities, and contracts with 5 private facilities. Pilot projects to evaluate individuals released from parole and to expedite release to parole were a focus of the discussions.

The department's FY 2009-10 budget is approximately $761 million, of which $678 million – 89.1 percent – is from the General Fund. An additional $67 million is needed to maintain the department's current level of services, for a total of $828 million. An "ideal" scenario for the department would include an additional $198 million for a total budget of $959 million. This amount would fully fund most of the department's programs, including mental health and educational programs.

Health care. Private citizens and representatives from the Department of Health Care Policy and Financing (DHCPF) testified about health care in the state. DHCPF focused on a historical review of Medicaid and programs administered by the department that provide health insurance coverage to eligible populations. Medicaid funding is shared equally between the state and the federal government. Currently, enhanced federal assistance from ARRA is supplementing the state's share of Medicaid costs.

Data concerning the health status of Coloradans and of the state's poorest citizens was provided. DHCPF representatives suggested several reforms including improved enrollment procedures to insure more eligible citizens, implementation of managed care models for health care delivery, and increased accountability for health care providers.

The department reported that its FY 2009-10 funding totals $4.0 billion, of which $1.5 billion – 37.5 percent – is appropriated from the General Fund. An additional $200 million would allow the department to keep pace with caseload, increase provider rates, and fund understaffed priorities. An additional $2.5 billion would permit the department to implement numerous "ideal" reforms, including enhancing enrollment structures to insure more clients through Medicaid and the Children's Basic Health Plan, establishing managed care models of health care delivery, and expanding waiver programs.

Human services. Department of Human Services' staff reviewed the services it offers and how the services are funded. Commission members discussed the administration of the department and ways to maximize efficiencies, such as through coordinating services with community partners and other state departments. The impact of preventative programs was also discussed.

The department reported that its FY 2009-10 funding totals $2.2 billion, including $671 million – 30.7 percent – from the General Fund (total funding for Human Services also includes reappropriated funds from the Department of Health Care Policy and Financing). The department noted an "ideal" funding level of close to $3.0 billion would allow it to eliminate waiting lists for services and expand preventative programs.

Strategic Plan

Senate Joint Resolution 09-044 required the commission to develop a strategic plan for state fiscal stability. The commission's recommended legislation, discussed in the next section, will serve as its strategic plan. Most notably, the commission decided that in order to best address the complex issues under its charge, further study involving more in-depth discussion and analysis of the state's revenue structure and fiscal policies was necessary. Thus, part of its strategic plan is to introduce resolutions requesting completion of a comprehensive tax study of the state revenue system and the creation of a commission to review fiscal policy currently established in the state constitution.

Dissenting opinion. Senate Joint Resolution 09-044 requires staff, upon request by a member of the commission, to include a summary of dissenting opinions to the strategic plan adopted by the commission. In a prepared statement to staff, minority members of the commission expressed disappointment that the commission failed to develop a plan for long-term fiscal stability. Minority commissioners were concerned the commission instead focused on the expansion of government spending. They expressed disagreement with the creation of an unelected commission empowered to refer constitutional amendments to the voters and indicated that it could result in the further expansion of government. Despite bipartisan effort on much of the commission's work, minority commissioners also expressed disappointment in the breakdown of bipartisan support for minority proposals, especially on a bill to create a rainy day fund.

Commission Recommendations

As a result of the commission's discussion and deliberations, it recommends three bills, a concurrent resolution, and a joint resolution for consideration in the 2009 legislative session.

Bill A — Higher Education Flexibility. This bill makes several changes to state law concerning state institutions of higher education.

Articulation agreements. On or before January 1, 2011, this bill requires that the Council for a Common Course Number System (council), in cooperation with the state institutions of higher education, develop statewide articulation agreements for five common degree programs. Such agreements guarantee that a student who receives an associate's degree from a two-year school in a degree program with an articulation agreement may enroll with junior status at a four-year school. The council and the schools must develop additional agreements following the 2011 deadline.

Foreign students. Under current law, 55 percent of incoming freshman and 66 percent of all students must be resident students. If a school continues to admit all resident first-time freshman applicants who meet admissions criteria, the school is permitted to exclude foreign students from the calculation of non-resident students.

Financial aid. Current law requires that the Colorado Commission of Higher Education (CCHE) annually determine the amount of financial aid for each institution, but the bill permits the schools to administer the programs and distribute the aid according to their own policies and procedures.

State fiscal rules. The bill permits state institutions to adopt their own fiscal procedures and to be exempt from the fiscal rules of the state controller.

IT rules. The bill permits state institutions to adopt their own information technology rules and procedures and to be exempt from technology rules of the state chief information security officer.

Financial reporting. When schools are required to provide financial data to a state entity, the school must provide audited financial statements.

Capital construction. Under current law, state institutions must have capital construction projects reviewed and authorized by the General Assembly. This bill allows the schools to construct buildings without approval of the General Assembly, although the schools must notify both the CCHE and the Capital Development Committee of each of their capital construction projects.

Bill B — Create Budget Stabilization Reserve Fund. This bill replaces the General Fund Reserve with a State Budget Stabilization Reserve Fund (rainy day fund) in the State Treasury. Under current law, the General Fund reserve will gradually increase by 0.5 percent a year over a five-year period beginning in FY 2012-13 from 4.0 percent of General Fund appropriations to 6.5 percent, assuming a trigger based on Colorado personal income growth is met. Under Bill B, these increases would occur in the newly-created State Budget Stabilization Reserve Fund. Once the fund reaches 6.5 percent, the bill requires that the fund increase 1.0 percent each year until the fund is equal to 15 percent of General Fund appropriations. All interest and income generated by the fund is required to remain in the fund.

Should a budget shortfall occur, current law requires the Governor to formulate a plan to balance the budget after the General Fund reserve has been drawn down to half of its value. Bill B requires the Governor to take action after the Budget Stabilization Reserve Fund has been drawn down by a third of its value during any year in which the fund originally totaled more than 4.0 percent of General Fund appropriations.

Bill C — Authorization for Agencies of the State to Enter into Public-Private Initiative Agreements with Nonprofit Entities. This bill permits state agencies to consider proposals for "public-private initiatives," or agreements between a state agency and a private, nonprofit organization. Such agreements may include:

- the acceptance of a nonprofit contribution in exchange for an agency grant of a right or interest in an agency project;
- sharing resources and the means of providing projects or services; or
- cooperation in researching, developing, and implementing projects or services.

The bill specifies the requirements for considering, evaluating, and accepting an unsolicited proposal for a public-private initiative received by a state agency from a private, nonprofit agency. If a state agency is able to achieve cost-savings in a fiscal year through the initiative, that agency is eligible to retain a portion of the savings resulting from the agreement.

Concurrent Resolution D — Fiscal Policy Constitutional Commission. This concurrent resolution refers a question to voters to create a 19-member Fiscal Policy Constitutional Commission for the purpose of reviewing the fiscal policy currently in the state constitution and, if it believes it appropriate, submitting one or more measures to the voters to amend the state constitution at the 2012 general election. A measure to amend the state constitution may be submitted only if it relates to fiscal policy, the commission conducts public meetings in each congressional district in the state, and it is approved by a majority of the commission members. Measures may include more than one subject and must be published in the 2012 ballot information booklet ("blue book") and session laws.

Commission members will be appointed by representatives from the legislative, executive, and judicial branches of state government for a term just over one year long. Members of the General Assembly and statewide officeholders are not eligible to serve on the commission. However, the General Assembly must hold public hearings on any measure developed by the commission and make a recommendation to voters on whether to approve or reject it. The General Assembly will not be able to alter the measure.

Joint Resolution E — Request for A Comprehensive Tax Study. This joint resolution requests that a comprehensive tax study on the state's tax and fiscal policies be conducted by the University of Denver and be funded by the private sector. The study is required to consider several aspects of the state's tax structure and policies, such as the distribution of the tax burden among taxpayers and the state and local governments, how the tax system affects the economy, recommendations for tax policy to ensure adequate financing for public services, and revenue and spending limits. The study is not limited to consideration of only the issues outlined in the resolution. The resolution requests that the study be provided to the General Assembly in January 2011.

Commission Charge

Pursuant to Senate Joint Resolution 09-044, the Fiscal Stability Commission is charged with studying the fiscal stability of the state, including but not limited to:

- solutions for higher education and transportation funding;
- affordable access to health care;
- kindergarten through twelfth grade education:
- state-owned assets; and
- the creation and adequate funding of a state rainy day fund.

The commission is also charged with developing a strategic plan for state fiscal stability that may be amended yearly to reflect existing economic realities and considering other needed issues.

The Fiscal Stability Commission consisted of 16 members, including 6 legislators and 10 additional members appointed by the President and Minority Leader of the Senate and the Speaker and the Minority Leader of the House of Representatives.

The commission is authorized to request information from other sources, including representatives from state and local government, private businesses, nonprofit organizations, and trade groups.

In addition, the commission is required to submit a written report of its findings and recommended legislation, limited to five bills, to the Legislative Council no later than November 6, 2009. The resolution also allows legislative staff, upon request of a commission member, to prepare dissenting opinions to the strategic plan adopted by the commission and incorporate them into the final written report.

Commission Activities

The Fiscal Stability Commission held 11 meetings during the 2009 interim. At these meetings, the commission received briefings on a broad spectrum of state budget and fiscal issues. The commission held hearings in which it learned about the state's main budget programs and the services they provide, as well as the state's revenue structure to show how these programs are funded. It also engaged in a dialogue regarding the characteristics of an ideal state in which to live and the role of government in the state. Representatives from state departments identified funding levels they thought were necessary to maintain the services they provide as well as additional funding amounts that would allow them to provide the highest quality services for the state.

The commission received testimony from non-partisan legislative staff, policy organizations, regional economists, university spokespersons, representatives of state agencies and local governments, economic development organizations, businesses, educational institutions, trade groups, environmental groups, and other interested parties involved in the state's budget issues. The commission also devoted half of one of its meetings to open public testimony. The commission chair noted that the commission's broad work would serve as a foundation for further discussion across the state that could ultimately lead to measures that would ensure the state's long-term fiscal stability.

State Revenue and Budget Overview

The commission's first meetings were devoted to a broad overview and discussion on Colorado's revenue structure, the budgets and cost drivers of major programs funded by the state General Fund, and fiscal policies in the state constitution.

State revenue structure. The commission received information from legislative staff and other organizations on the state's revenue system. The state's General Fund receives about 95 percent of its revenue from income and sales taxes. These sources are volatile during swings in the economy. This affects the state's ability to maintain a consistent level of services. Rising caseloads for certain programs that coincide with falling revenue during economic downturns result in further budget challenges. The commission heard testimony from several individuals and organizations on the benefits of creating a rainy day fund so that it would be better able to maintain programs during future recessions.

Some commission members and organizations that testified before the commission expressed the view that the state needed more revenue to fund the programs and services that were necessary to ensure that the state remain a quality place to live and do business. However, others believed that the state collected enough revenue to provide core government services and that it could spend its money more efficiently. Colorado's decentralized local government tax system results in state taxes that rank among the lowest in the country while its local government taxes rank among the highest.

Cost drivers. The commission received information from legislative staff and department representatives about the budgets for the state's largest programs. The commission learned that the budgets for most of the state's General Funded programs are driven by state law, growth in the populations that use services, federal requirements, and the costs for providing the services. For example, the size of the Department of Corrections budget is in part influenced by sentencing laws and the costs of housing inmates, while spending on kindergarten through 12th grade education is driven by the growth of the state's population and constitutional provisions that require funding increases.

Due to these cost drivers, growth in the budgets for some programs have resulted in less money being available for others. For instance, the commission heard testimony from representatives of the state's higher education institutions and other interested parties about the decline in state support for higher education over time and its potential negative impact on the state.

A report from the University of Denver presented to the commission estimated that if the average spending growth rate on education, corrections, and health care were to continue, 91 cents of every General Fund dollar would go to these programs in five years. Several individuals and organizations pointed to the need to address this unsustainable trend to help ensure the state's long-term fiscal stability.

Constitutional fiscal policies. Part of the commission's discussions on the state budget focused on the fiscal policies in the state constitution. The three main fiscal policies that have the most impact on the state budget are the Gallagher Amendment, the Taxpayers' Bill of Rights (TABOR), and Amendment 23. The Gallagher Amendment requires that the proportion of residential and nonresidential assessed values (or property tax base) remain the same over time. TABOR constitutionally requires voter approval for tax increases and limits how much revenue the state can retain and spend – except during the current five-year Referendum C timeout period – while Amendment 23 constitutionally requires annual increases in spending for K-12 education. Several organizations testified that these constitutional provisions provide the state legislature less flexibility in its decisions on how to fund state services.

The commission learned that one effect of these constitutional provisions has been a decline in property tax revenue to schools, causing the state share of kindergarten through 12th grade education funding to increase from approximately 44 to 65 percent over the past 23 years. This trend has resulted in state education funding growing to over 40 percent of the state's budget, leaving less resources for other programs.

The discussion on these constitutional fiscal policies included a wide spectrum of opinions on their impact on the state. Some commission members and organizations that testified believed that TABOR hinders the state's ability to invest in programs to produce quality services needed by the state. Others believed that the amendment provided a necessary constraint on the growth of government and prevented the state from experiencing more severe budget problems. In addition, others expressed the view that Amendment 23's spending requirements needed to be revised or repealed to provide the state more budget flexibility. There was also the belief that the combination of all three constitutional provisions hinders the state's ability to budget effectively.

Commission recommendations. As a result of the commission's broad discussions on the state's budget, the commission recommended four bills. Bill B increases the state's savings by replacing the current General Fund reserve with a Budget Stabilization Reserve Fund. The bill gradually increases the fund level over time to 15 percent of General Fund appropriations.

The commission also recommended Concurrent Resolution D, which refers a measure to the voters asking for the creation of a commission charged with reviewing the state's constitutional fiscal policies. The commission is authorized to refer constitutional measures to the voters. Also, the commission recommends Joint Resolution E, which requests that the University of Denver conduct a comprehensive study of the state's revenue structure and fiscal policies and report its findings to the General Assembly. It has been 50 years since a comprehensive tax study was completed in Colorado. The commission heard testimony that a new study was needed to make recommendations to ensure that the tax system is equitable, efficient, and able to produce sufficient revenue to fund appropriate government services.

Finally, the commission discussed the potential for public agencies to partner with the private and nonprofit sectors to increase efficiencies in state programs. As a result, the commission recommends Bill C, which permits state agencies to consider proposals for "public-private initiatives," or agreements between a state agency and a nonprofit organization to provide certain services.

Core Values and the Role of Government

Following the meetings that provided the commission background information on the state's budget structure, its largest programs and services, and perspectives on the state's fiscal stability, the commission engaged in round-table dialogues discussing the core values the members had regarding the characteristics of an ideal state in which to live, the vision the commission had for Colorado's future, and the role of government in that future. Though the commission members expressed various and at many times divergent beliefs on the proper size and role of government in the state, the commission reached a consensus that the state government has a role in providing:

- transportation and infrastructure;
- public safety and security;
- education; and
- a safety net to help out individuals and families in need.

Funding for State Programs

At its last meetings, the commission discussed the services the state provides, including the quality of the outcomes from the services and the costs for providing them. The commission focused on the state's core programs, especially the six largest programs dependent on the state's General Fund, and the state's capital budgets for the construction and maintenance of state buildings and the state's highway system. To help inform these discussions, the commission engaged the departments that administer these main programs with the following three questions:

- What is the department's current funding level and what consequences, if any, have there been to the department's mission as a result of budget cuts?
- What minimum or middle funding level is needed to maintain the department's current level of services?
- What is the "ideal" funding level needed to provide the highest quality services for the people of Colorado?

The funding levels reviewed by the commission as a result of these discussions are summarized in Table 1. The departments identified that an additional $9.3 billion was needed in order to provide the highest quality services for the state's citizens and business. This amount is a 47 percent increase over the current budget for the state's largest programs of approximately $19.8 billion.

The commission engaged in discussions on the outcomes that may result from increased funding for services. Some members questioned whether more funding was necessary to provide quality services they believed were appropriate, while others expressed the view that the state needed to invest more to ensure a better future for the state.

Part of the increase in funding levels identified by departments in Table 1 is the amount needed to backfill the scheduled loss of temporary federal money from the American Recovery and Reinvestment Act (ARRA) provided to help state governments through the economic downturn.

Table 1
Current Funding and Funding Need as Reported by the State's Largest Budget Programs

	FY 2009-10 Funding Level		Funding Need	
State Program	**All Sources [1] (in millions)**	**General Fund Portion (in millions and percent of total funding for program)**	**"Middle" Scenario All Sources (in millions)**	**"Ideal" Scenario All Sources (in millions)**
Transportation	$974	$0 (0%)	$1,500	$2,500
Additional amount			$527	$1,527
Percent Increase			54%	157%
Capital Construction	$481	$75 (16%)	$593	$834
Additional Amount			$112	$353
Percent Increase			23%	73%
K-12 Education [2]	$8,179	$3,239 (40%)	$9,401	$10,994
Additional Amount			$1,222	$2,815
Percent Increase			15%	34%
Judiciary	$451	$336 (74%)	$497	$535
Additional Amount			$46	$84
Percent Increase			10%	19%
Higher Education	$2,791	$661 (24%)	$2,791	$3,772
Additional Amount [3]			$231	$981
Percent Increase			0%	35%
Corrections	$761	$678 (89%)	$828	$959
Additional Amount			$67	$198
Percent Increase			9%	26%
Human Services	$2,180	$671 (31%)	$2,180	$2,993
Additional Amount [4]			$0	$813
Percent Increase			0%	37%
Health Care	$4,016	$1,508 (37%)	$4,216	$6,516
Additional Amount [5]			$200	$2,500
Percent Increase			5%	62%
All Other Departments	$3,169	$311 (10%)	NA	NA
Total Funding - All Departments	$23,002	$7,479 (33%)	NA	NA
Total Funding for Big Budget Programs Only	$19,833	$7,168 (36%)	$22,006	$29,104
Additional Amount			$2,405	$9,271
Percent Increase			11%	47%

NA = Not Applicable

[1] *The total funding amounts for each department include reappropriated funds, which are funds that are appropriated more than once in the budget. Usually this occurs when funding is appropriated to one department but then transferred to another department for the payment of services.*

[2] *The K-12 funding level represents the total amount spent on K-12 education in the state, including funding from state, local, and federal sources.*

[3] *The middle scenario for Higher Education shows an additional amount of $231 million in funding need, but shows the same total level of funding as the current funding level. The $231 million is the temporary federal ARRA money higher education has received that the department indicated will need to be backfilled when its no longer available.*

[4] *The additional amount of funding need for the Department of Human Services includes federal matching money it would receive if the department increased its funding levels. Of the total $813 million, it is estimated that the state's share would be $692 million and the federal government would provide the remaining $121 million.*

[5] *The additional amount of funding need for the Department of Health Care Policy and Financing includes federal matching money it would receive if the department increased its funding levels. The state's share would be roughly half of both the middle scenario and the ideal scenario, or $100 million and $1.25 billion, respectively, with the federal government roughly providing the remaining half in both scenarios.*

Transportation

The commission received testimony from private citizens, representatives of local governments, and the Department of Transportation on issues related to construction, revenue, and spending trends. Testimony also addressed the role of transportation in economic viability, the use of mass transit, the condition of Colorado's aging infrastructure, congestion, and environmental impacts.

Staff from the Department of Transportation provided an overview of revenue sources used to fund transportation projects. These include federal fuel excise taxes, Colorado fuel excise taxes, vehicle registration fees, other fees and fines, and General Fund transfers. Department and legislative staff provided a review of historical transfers of revenue for transportation from the General Fund. Staff continued to describe the impacts of legislation passed in 2009 that requires certain transfers (subject to triggers) for transportation, capital construction, and General Fund reserves. The commission also discussed the use of Transportation Revenue Anticipation Notes (TRANS), and the impact of specific legislation requiring higher vehicle registration fees, estimated to increase state revenue by $200 million per year beginning in FY 2009-10.

The commission heard testimony concerning Colorado's aging infrastructure, the rise in construction costs, and diminishing growth in revenue from fuel excise taxes due to changes in fuel efficiency and consumption patterns. In light of these challenges, the commission considered new and expanded revenue sources including:

- bonding;
- tolling;
- increasing the Colorado fuel excise tax;
- charging a fee for vehicle miles traveled;
- leveraging public-private partnerships; and
- charging a sales tax for vehicle-related purchases.

The current department budget for FY 2009-10 totals $973.5 million. Department representatives noted that to maintain the current transportation system, the annual funding need is $1.5 billion. Based on the recommendations of the Governor's Blue Ribbon Panel on Transportation Finance and Implementation, "ideal" transportation funding is $2.5 billion annually. This amount could fund transportation infrastructure consistent with the panel's vision for 2050. Further detail concerning funding for transportation is provided in Table 1 on page 13.

Commission recommendation. The commission considered a proposal to extend the years in which money in the General Fund could be transferred to transportation projects; however, this proposal was not recommended as a commission bill.

Capital Construction

The commission heard testimony about capital construction and controlled maintenance for state-owned facilities from legislative staff, the chair of the Capital Development Committee, and the Colorado State Architect. Capital projects include capital construction, controlled maintenance, and capital renewal. Capital construction projects are program driven and allow an agency to improve or alter its ability to provide a certain program or service. Controlled maintenance projects are system driven and involve corrective repairs or replacement of utilities and equipment and site improvements. Capital renewal projects are controlled maintenance projects that are estimated to cost more than $2 million.

The commission was presented with a five-year history of state funding for capital construction and controlled maintenance. The average amount funded in each of the last five fiscal years was $136.1 million. FY 2007-08 marked the high point in funding, with $259.1 million appropriated from state funds for capital projects. The most recent fiscal year, FY 2009-10, marked the low point in funding, with $75.1 million, or only 29 percent of the FY 2007-08 total, appropriated for capital projects. In each of the last five years, roughly the same amount overall has been appropriated for higher education institutions and state departments.

The commission was also presented with a 20-year history of revenue available for capital projects. A review of this document illustrated the limited duration of most revenue streams intended to address capital need. The commission also considered a comparison between the amount requested from state funds for capital projects, and the amount appropriated, which revealed that only 9.2 percent of the total amount requested was appropriated in FY 2009-10. In contrast, during FY 2007-08, the recent high point in funding, 54.1 percent of the total amount requested was appropriated. Staff explained that there is presently no significant, dedicated funding stream for future capital projects, and that there will likely be a continued shortfall of available revenue to address the growing capital need.

The commission considered a recommendation made by the Office of the State Architect that between 2 and 4 percent, or $152.4 million to $304.8 million, of the current replacement value of the state's existing General Fund building inventory be appropriated annually to maintain and improve facilities. The commission also heard testimony about annual lease payments for certificates of participation (COP) projects, another area of capital need.

Table 1 on page 13 shows the FY 2009-10 funding level for capital construction and two possible funding scenarios for future years, including a "middle" funding scenario and an "ideal" funding scenario. The current level of state funding for capital construction totals $75.1 million General Fund. The "middle" funding level of $593 million would allow the state to fund annual COP payments and the full 4 percent of the current replacement value of all General Fund buildings to maintain and improve the state's existing inventory. An "ideal" funding level of $834 million would allow the state to fund annual COP payments, the full 4 percent of the current replacement value of all General Fund buildings to maintain and improve the state's existing inventory, newly requested facilities, and information technology upgrades for departments and higher education institutions.

K-12 Education

The commission considered testimony concerning K-12 education from private citizens, school district representatives, education associations, the Colorado Department of Education (CDE), and legislative staff. Presentations focused on public education issues in the context of the state's long-term fiscal stability.

Staff presented a historical overview of the Colorado School Finance Act, and the way state funding for public education is affected by the Gallagher Amendment, which impacts the tax assessment rates for property; TABOR, which limits total school district revenue; Senate Bill 07-199, which stabilizes mill levies; and Amendment 23, which requires minimum funding increases for K-12 public education. Staff noted that this mix of state law and constitutional requirements has shifted the principal financial burden for public schools to the state's General Fund, and away from local revenue sources. Over the past 23 years, the state share of education funding has increased from 44 percent to 65 percent.

The commission heard from Believe in a Better Colorado, an alliance between the three largest K-12 education associations: the Colorado Association of School Boards, the Colorado Education Association (teacher's union), and the Colorado Association of School Executives. Representatives from this group called for tax reform and increased investment in public services, indicating that Colorado lags behind other states in funding for public schools, for higher education, and for other essential public services. This presentation also included information on measures of education outcomes, such as graduation rates, and ways that the state's education system could be improved, such as better utilization of technology, and tailoring instruction to address the desired skills for a 21st century workforce and diverse student population. Representatives from the Colorado League of Charter Schools also addressed the commission, noting the increased number of students attracted to charter schools and agreeing that the state needs to consider fiscal reform.

Representatives from the CDE provided the commission with information on Colorado school finance, categorical program funding, and enrollment trends. The department testified concerning the academic performance of students, noting specifically the challenges of educating at-risk students. The department also addressed several areas of current reform, including the state's model content standards, the recruitment and retention of quality teachers, the clear presentation of student assessment data, Colorado's longitudinal-growth data system, and aligning state and federal accountability requirements. The commission was also provided with an update concerning ARRA funding and the federal "Race to the Top" grant program application.

The department reported that funding for public schools from all sources (local, state, and federal) totaled approximately $8.2 billion in fiscal year 2009-10. Of this amount, approximately $3.2 billion is appropriated from the General Fund and approximately $622 million is appropriated from other state sources, including the State Education Fund. The department calculated that an additional $1.2 billion in funding would allow the state to bring expenditures per-pupil and teacher salaries into parity with the national average for these expenditures. This additional funding would also allow the CDE to close gaps in categorical program funding. An additional $2.8 billion above current levels would permit the department to implement numerous "ideal" reforms, including establishing full-day kindergarten for all students and half-day preschool for all 4 year olds, and increasing instruction time for all students by 20 percent. Further detail concerning funding for K-12 education is provided in Table 1 on page 13.

Judicial

The commission received testimony from the Judicial Department, private citizens, and staff regarding the role, budget, and funding of the department. Department staff provided an overview of its responsibilities, which include overseeing the state's court system, administering the state probation system, and administering three independent agencies: the Public Defender's Office, the Office of Alternate Defense Counsel, and the Office of the Child's Representative. The department also discussed recently implemented programs and efficiencies.

The current FY 2009-10 budget for the Judicial Department totals $451 million, with $336 million (74.5 percent) coming from the General Fund. The department estimated about $46 million additional dollars, or about $497 million in total, is needed to restore the recent cuts that have been made to the department, address the current backlog in cases, and provide quality services. Ideally, the department requires total funding of $535 million, which would help enable it to create a rainy day fund to address future budget shortfalls.

The State Court Administrator of Colorado indicated to the commission that the Judicial Department receives the sixth-largest General Fund appropriation. The administrator discussed the personnel of the judicial branch, which includes public defenders, judges, alternate defense counsel, and the staff of the Office of the Child Representative. The Judicial Department is also responsible for administering the state probation system. The Judicial Department currently has 216 vacant positions. The administrator explained that since the department's budget is 88 percent personnel costs, when the department makes expenditure cuts, it has to implement furlough days or eliminate staff.

Higher Education

The commission received testimony concerning higher education from the Department of Higher Education (DHE), the Colorado Commission on Higher Education (CCHE), the National Center for Higher Education Management Systems (NCHEMS), State Higher Education Executive Officers (SHEEO), Legislative Council Staff, university presidents, current and former state representatives, and private citizens. The commission reviewed the way Colorado appropriates money to higher education via the College Opportunity Fund and fee-for-service contracts. The commission also received information on the enterprise status of some state institutions, and how revenue and spending at those schools are not constrained by TABOR.

Representatives of DHE, NCHEMS, and SHEEO provided an overview of higher education that compared Colorado with other states on a variety of measures, including post-secondary graduation rates, educational attainment, and state financial support. The commission also discussed the productivity of state institutions, and were provided a historical review of revenue the schools receive from the state's General Fund, federal sources, and tuition.

Representatives from the schools discussed several topics, including privatization, the effect of budget reductions, and the impact of ARRA funds. The commission considered enrollment trends, which tend to rise during times of economic downturn, resident and non-resident tuition, and issues related to access and affordability, including the amount of need-based grants supplied to students. School representatives suggested that greater flexibility for higher education institutions could reduce the dependency of the schools on state funding. Several suggestions for reforming the current system were offered, including changing current law to permit the schools to:

- establish their own fiscal rules for purchasing and travel;
- set tuition rates;
- establish policies for the distribution of financial aid;
- independently negotiate construction of campus buildings; and
- adjust the allowable ratio of resident, non-resident, and international student enrollment.

The FY 2009-10 total budget for the department is $2.8 billion, of which $661 – 24 percent – is appropriated from the General Fund. The department's total budget also includes $585 million in funds that are appropriated more than once. As a result of the current budget situation, the Governor has allocated money from ARRA to higher education. This amount is currently expected to be $231 million and could go as high as $377 million. The department testified that in order to maintain current funding the system must prepare to replace the ARRA funding scheduled to be eliminated after 2010. Additionally, in order to fund the system in amounts roughly equal to what peer institutions in other states receive in total revenue, the state should find an additional $750 million annually for the schools. Further detail concerning funding for higher education is provided in Table 1 on page 13.

Commission recommendation. As a result of its deliberations, the commission recommended Bill A, granting higher education institutions greater flexibility in many areas relating to their operations and administration. The bill grants state-supported institutions of higher education more control over:

- formulating articulation agreements between state-supported schools;
- enrollment ratios of resident students, out-of-state students, and foreign students;
- financial aid distributions;
- accounting and information technology procedures; and
- maintenance and construction of infrastructure.

Corrections

The commission heard from the Department of Corrections, private citizens, and staff regarding the role, budget, and funding of the department. The department briefed the commission on its services and budget. The department's budget is mainly driven by inmate and parole population growth, changes to criminal laws, and capacity issues. Currently the department is responsible for overseeing 23,000 inmates, operating 22 state facilities, and contracting with 5 private facilities.

Department staff reported that the department's FY 2009-10 budget is approximately $761 million, of which $678 million is from the General Fund – 89.1 percent – making it the third largest department in the amount of General Funds it receives. The department staff estimated an additional $67 million is needed to maintain the department's current level of services, for a total of $828 million, and that an ideal scenario for the department would include an additional $198 million, for a total budget of $959 million. This amount would fully fund most of the department's programs, including mental health and educational programs.

Health Care Policy and Financing

The commission heard testimony from private citizens and the Department of Health Care Policy and Financing (DHCPF) about health care in the state. DHCPF provided a historical review of Medicaid and an overview of programs administered by the department that provide health insurance coverage to eligible populations. Medicaid funding is shared equally between the state and the federal government. Currently, enhanced federal assistance from ARRA is supplementing the state's share of Medicaid costs. Also discussed were Medicaid waiver programs, in which the state is permitted to cover a broad array of home- and community-based services for populations that would otherwise be ineligible for public assistance.

The department noted that ARRA money provided direct relief to the state's General Fund and cash funds in financing the state's share of Medicaid. Such relief allowed the state to obtain 100 percent of federal matching dollars, despite recent budget cuts. The department concluded their testimony by listing several department goals, which include increasing the number of insured Coloradans, improving health outcomes for individuals receiving services, increasing access to health care, containing health care costs, and improving the long-term care service delivery system.

The department also identified several reforms it recommends for improving the health of Medicaid recipients including:

- improving enrollment practices to insure more eligible individuals;
- better defining of benefits;
- implementing managed care models of health care delivery, and
- increasing accountability for health care providers.

The department reported that its FY 2009-10 funding totals $4.0 billion, of which $1.5 billion – 37.5 percent – is appropriated from the General Fund. An additional $200 million would allow the department to keep pace with caseload, increase provider rates, and fund understaffed priorities. An additional $2.5 billion would permit the department to implement numerous "ideal" reforms, including enhancing enrollment structures to insure more clients through Medicaid and the Children's Basic Health Plan, establishing managed care models of health care delivery, and expanding waiver programs. Further detail concerning funding for the DHCPF is provided in Table 1 on page 13.

Human Services

The commission received testimony from the Department of Human Services, private citizens, and staff regarding the role, budget, and funding of the department. Department staff reviewed the services offered by the department, noting that it has a network of community providers and partners. Staff explained that while the department directly operates the state juvenile corrections system, veterans' nursing homes, and institutions for persons with mental illness and developmental disabilities, the state coordinates with local governments to directly provide a variety of other services. These services include alcohol and drug abuse treatment, domestic violence services, food distribution and assistance, and many others. The commission discussed the state's proper role in administering human service programs and coordinating with local governments to provide services.

Commission members discussed ways to maximize department efficiencies by better coordinating services with community partners and other state departments. The commission also discussed the impact of preventative programs as a long-term cost saving solution.

Department staff indicated that inflationary costs for employee salaries and demand for services (caseload growth) are the primary drivers of the department budget. The department reported that its FY 2009-10 funding totals $2.2 billion, of which $671 million – 31 percent – is from the General Fund. The department's total funding also includes reappropriated funds from the Department of Health Care Policy and Financing. The department noted that an "ideal" funding level of approximately $3.0 billion would allow it to eliminate waiting lists for services and expand preventative programs. Further detail concerning funding for the Department of Human Services is provided in Table 1 on page 13.

Strategic Plan

Senate Joint Resolution 09-044 required the commission to develop a strategic plan for state fiscal stability. The commission's recommended legislation, discussed later in the report, will serve as its strategic plan. Most notably, the commission decided that in order to best address the complex issues under its charge, further study involving more in-depth discussion and analysis of the state's revenue structure and fiscal policies was necessary. Thus, part of its strategic plan is to introduce resolutions requesting completion of a comprehensive tax study of the state revenue system and the creation of a commission to review fiscal policy in the state constitution.

Summary of Recommendations

As a result of commission deliberations, the commission recommends five bills and resolutions for consideration during the 2010 legislative session.

Bill A — Higher Education Flexibility

Bill A makes several changes to state law concerning state institutions of higher education.

Articulation agreements. On or before January 1, 2011, this bill requires that the Council for a Common Course Number System (council), in cooperation with the state institutions of higher education, to develop statewide articulation agreements for five common degree programs. Such agreements guarantee that a student who receives an associate's degree from a two-year school in a degree program with an articulation agreement may enroll with junior status at a four-year school. The council and the schools must develop additional agreements following the 2011 deadline.

Foreign students. Under current law, 55 percent of incoming freshman and 66 percent of all students must be resident students. If a school continues to admit all resident first-time freshman applicants who meet admissions criteria, the school is permitted to exclude foreign students from the calculation of non-resident students.

Financial aid. Current law requires that the Colorado Commission of Higher Education (CCHE) annually determine the amount of financial aid for each institution, but the bill permits the schools to administer the programs and distribute the aid according to their own policies and procedures.

State fiscal rules. The bill permits state institutions to adopt their own fiscal procedures and to be exempt from the fiscal rules of the state controller.

IT rules. The bill permits state institutions to adopt their own information technology rules and procedures and to be exempt from technology rules of the state chief information security officer.

Financial reporting. When schools are required to provide financial data to a state entity, the school must provide audited financial statements.

Capital construction. Under current law, state institutions must have capital construction projects reviewed and authorized by the General Assembly. This bill allows the schools to construct buildings without approval of the General Assembly, although the schools must notify both the CCHE and the Capital Development Committee of each of their capital construction projects.

Bill B — Create Budget Stabilization Reserve Fund

Bill B replaces the General Fund Reserve with a State Budget Stabilization Reserve Fund (rainy day fund) in the State Treasury. Under current law, the General Fund reserve will gradually increase by 0.5 percent a year over a five-year period beginning in FY 2012-13 from 4.0 percent of General Fund appropriations to 6.5 percent, assuming a trigger based on Colorado personal income growth is met. Under Bill B, these increases would occur in the newly-created State Budget Stabilization Reserve Fund. Once the fund reaches 6.5 percent, the bill requires that the fund increase 1.0 percent each year until the fund is equal to 15 percent of General Fund appropriations. All interest and income generated by the fund is required to remain in the fund.

Should a budget shortfall occur, current law requires the Governor to formulate a plan to balance the budget after the General Fund reserve has been drawn down to half of its value. Bill B requires the Governor to take action after the Budget Stabilization Reserve Fund has been drawn down by a third of its value during any year in which the fund originally totaled more than 4.0 percent of General Fund appropriations.

Bill C — Authorization for Agencies of the State to Enter into Public-Private Initiative Agreements with Nonprofit Entities

Bill C permits state agencies to consider proposals for "public-private initiatives," or agreements between a state agency and a private, nonprofit organization. Such agreements may include:

- the acceptance of a nonprofit contribution in exchange for an agency grant of a right or interest in an agency project;
- sharing resources and the means of providing projects or services; or
- cooperation in researching, developing, and implementing projects or services.

The bill specifies the requirements for considering, evaluating, and accepting an unsolicited proposal for a public-private initiative received by a state agency from a private, nonprofit agency. If a state agency is able to achieve cost-savings in a fiscal year through the initiative, that agency is eligible to retain a portion of the savings resulting from the agreement.

Concurrent Resolution D — Creation of the Fiscal Policy Constitutional Commission

This concurrent resolution refers a question to voters to create a 19-member Fiscal Policy Constitutional Commission for the purpose of reviewing the fiscal policy in the state constitution and, if it believes it appropriate, submitting one or more measures to the voters to amend the state constitution at the 2012 general election. A measure to amend the state constitution may be submitted only if it relates to fiscal policy, the commission conducts public meetings in each congressional district in the state, and it is approved by a majority of the commission members. Measures may include more than one subject and must be published in the 2012 ballot information booklet ("blue book") and session laws.

Commission members will be appointed by representatives from the legislative, executive, and judicial branches of state government for a term just over one year long. Members of the General Assembly and statewide officeholders are not eligible to serve on the commission. However, the General Assembly must hold public hearings on any measure developed by the commission and make a recommendation to voters on whether to approve or reject it. The General Assembly will not be able to alter the measure.

Joint Resolution E — Request for A Comprehensive Tax Study

Joint Resolution E requests that a comprehensive tax study on the state's tax and fiscal policies be conducted by the University of Denver and be funded by the private sector. The study is required to consider several aspects of the state's tax structure and policies, such as the distribution of the tax burden among taxpayers and the state and local governments, how the tax system affects the economy, recommendations for tax policy to ensure adequate financing for public services, and revenue and spending limits. The study is not limited to consideration of only the issues outlined in the resolution. The resolution requests that the study be provided to the General Assembly in January 2011.

Dissenting Opinion

Senate Joint Resolution 09-044 requires staff, upon request by a member of the commission, to include a summary of dissenting opinions to the strategic plan adopted by the commission. The dissenting opinion provided by the minority members of the commission is attached (Attachment A). Expressing disappointment that the commission failed to develop a plan for long-term fiscal stability, minority commissioners were concerned the commission instead focused on the expansion of government spending. They expressed disagreement with the focus of the direction taken by majority commissioners, including the overarching question, "What kind of state do we want to live in?" The minority members also noted the relatively limited amount of time provided for public testimony compared with the amount of time provided for testimony from state departments. The dissenting opinion notes disagreements between majority and minority commissioners about the core functions of government. Minority commissioners expressed disagreement with the creation of an unelected commission empowered to refer constitutional amendments to the voters and indicated that it could result in the further expansion of government. Despite bipartisan effort on much of the commission's work, they also expressed disappointment in the breakdown of bipartisan support for minority proposals.

Resource Materials

Meeting summaries are prepared for each meeting of the commission and contain all handouts provided to the commission. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-4900). The listing below contains the dates of commission meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

http://www.colorado.gov/lcs/FiscalStabilityCommission

Meeting Date and Topics Discussed

July 8, 2009

- Drivers of the state budget
- The School Finance Act of 1994, the Gallagher amendment, and Amendment 23
- Framework for General Fund expenditures
- State revenue structure
- June revenue forecast
- Economic outlook and state budget trends

July 9, 2009

- The state treasury
- Taxes, the Taxpayers Bill of Rights (TABOR)
- Enterprises
- The economy
- Measures of state economic competitiveness
- State expenditures on key public services
- Local government and special districts

July 28, 2009

- Education
- Public services
- Health care
- Transportation
- Human services
- The judicial branch

- State personnel
- Public Employees' Retirement Association (PERA)
- Higher education

July 29, 2009

- Perspectives on the state budget and fiscal stability issues
- School finance
- Labor
- Small business
- Local government
- Environmental issues
- Parks and open space
- Public testimony

August 19, 2009

- Executive branch budget
- Review of testimony

August 20, 2009

- Colorado Department of Transportation
- Colorado Department of Education

October 1, 2009

- Pre-K through 12th grade education
- Race-to-the-top education grants
- State judicial system

October 2, 2009

- Higher education
- Corrections

October 14, 2009

- Health care
- Capital construction
- Human services

October 15, 2009

- Potential legislation

November 4, 2009

- Review, discussion, and final action on commission legislation

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL A

LLS NO. 10-0336.01 Michael Dohr **SENATE BILL**

SENATE SPONSORSHIP

Morse, Heath

HOUSE SPONSORSHIP

Ferrandino, Court, Gerou

Senate Committees **House Committees**

A BILL FOR AN ACT

CONCERNING HIGHER EDUCATION FLEXIBILITY.

Bill Summary

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

Long-term Fiscal Stability Commission. Section 1. The bill directs the council for a common course number system (council), in conjunction with the state institutions of higher education (institutions) and the guaranteed transfer program, to develop articulation agreements for 5 degree programs before January 1, 2011. After completion of the first 5 articulation agreements, the council will develop additional articulation agreements.

Section 2. Under current law, each institution must ensure that no

less than two-thirds of the students enrolled at each campus of the institution are in-state students. The bill applies the two-thirds in-state student requirement to the institution as a whole rather than each campus. Under current law, foreign students are included as out-of-state students for purposes of calculating the ratio between in-state and out-of-state students. The bill exempts institutions that meet certain criteria from the requirement that they include foreign students in the calculations for in-state and out-of-state students.

Sections 3 and 4. Where, under current law, the department of higher education sets financial aid eligibility requirements, the bill gives institutions that authority. The bill removes the requirement that an institution that is an enterprise dedicate a percentage of its revenues to need-based financial aid if the institution increases tuition.

Sections 5-7. Where institutions are currently subject to the state fiscal rules, the bill allows the institutions to adopt their own rules.

Section 8. Where institutions are currently subject to information technology rules promulgated by the state chief information security officer, the bill allows the institutions to adopt their own rules.

Section 9. Where institutions are required to provide various state entities with financial data, the bill permits an institution to provide only audited financial statements in those cases.

Sections 10-14. Under current law, institutions must submit capital construction projects to the Colorado commission on higher education (CCHE) for approval and comply with other statutory provisions regarding capital construction projects. The bill allows the institutions to notify CCHE and the capital development committee of its projects.

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

SECTION 1. 23-1-108.5 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23-1-108.5. Duties and powers of the commission with regard to common course numbering system - repeal. (3) (d.5) (I) (A) ON OR BEFORE JANUARY 1, 2011, THE COUNCIL SHALL DEVELOP STATEWIDE ARTICULATION AGREEMENTS FOR AT LEAST FIVE COMMON DEGREE PROGRAMS AMONG THE STATE'S TWO-YEAR AND FOUR-YEAR HIGHER EDUCATION INSTITUTIONS. THE COUNCIL SHALL WORK WITH ALL OF THE HIGHER EDUCATION INSTITUTIONS AND THE GUARANTEED TRANSFER

PROGRAM IN THE DEPARTMENT OF HIGHER EDUCATION TO DEVELOP THE ARTICULATION AGREEMENTS.

(B) THE ARTICULATION AGREEMENTS SHALL GUARANTEE THAT A STUDENT WHO RECEIVES AN ASSOCIATE'S DEGREE FROM A TWO-YEAR HIGHER EDUCATION INSTITUTION IN A DEGREE PROGRAM WITH AN ARTICULATION AGREEMENT MAY ENROLL WITH JUNIOR STATUS AT A FOUR-YEAR HIGHER EDUCATION INSTITUTION IN A DEGREE PROGRAM WITH SAID ARTICULATION AGREEMENT. THE ARTICULATION AGREEMENT SHALL PERMIT A FOUR-YEAR HIGHER EDUCATION INSTITUTION TO REQUIRE ADDITIONAL LOWER-DIVISION DEGREE PREPARATION COURSES AFTER THE TRANSFER, IF NECESSARY, IN THE DEGREE PROGRAM WITH THE ARTICULATION AGREEMENT WITHOUT EXTENDING THE TIME TO GRADUATION COMPARED TO STUDENTS WHO ENROLLED IN THE DEGREE PROGRAM AS FRESHMEN AT THE FOUR-YEAR INSTITUTION.

(C) THE ARTICULATION AGREEMENTS SHALL NOT GUARANTEE AN INDIVIDUAL WHO RECEIVES AN ASSOCIATE'S DEGREE FROM A TWO-YEAR HIGHER EDUCATION INSTITUTION ADMISSION TO A FOUR-YEAR HIGHER EDUCATION INSTITUTION. THE ARTICULATION AGREEMENTS SHALL NOT PRECLUDE A TWO-YEAR HIGHER EDUCATION INSTITUTION FROM OFFERING DEGREE PROGRAMS THAT ARE NOT SUBJECT TO THE TRANSFER PROVISIONS OF THIS SECTION.

(II) THE COUNCIL, WITH THE STATE INSTITUTIONS OF HIGHER EDUCATION AND THE GUARANTEED TRANSFER PROGRAM IN THE DEPARTMENT OF HIGHER EDUCATION, SHALL CONTINUE TO DEVELOP ARTICULATION AGREEMENTS FOR PROGRAMS AFTER COMPLETING THE NUMBER OF ARTICULATION DEGREE PROGRAMS SPECIFIED IN SUB-SUBPARAGRAPH (A) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d.5).

(III) EACH OF THE TWO-YEAR HIGHER EDUCATION INSTITUTIONS

AND FOUR-YEAR HIGHER EDUCATION INSTITUTIONS THAT OFFER THE DEGREE PROGRAMS THAT ARE THE SUBJECT OF THE ARTICULATION AGREEMENTS SHALL OFFER EACH OF THE COURSES NECESSARY FOR THE DEGREE REQUIREMENTS AT ITS PARTICULAR DEGREE LEVEL.

SECTION 2. 23-1-113.5 (1), Colorado Revised Statutes, is amended, and the said 23-1-113.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-1-113.5. Commission directive - resident admissions. (1) It is the intent of the general assembly that all state-supported institutions of higher education operate primarily to serve and educate the people of Colorado. The general assembly therefore directs the commission to develop admission policies to ensure that, beginning with the fall term of 1994 and for the fall term of each year thereafter, not less than fifty-five percent of the incoming freshman class at each state-supported institution of higher education are in-state students as defined in section 23-7-102 (5). Commencing with the fall term of 1995, this requirement shall be met if the percentage of in-state students in the incoming freshman class for the then-current fall term and the two previous fall terms averages not less than fifty-five percent. Such fifty-five percent requirement shall also apply to the percentage of incoming freshmen students who are admitted based on criteria other than standardized test scores, high school class rank, and high school grade point average pursuant to section 23-1-113 (1) (b). In addition, the commission shall develop admission policies to ensure, beginning with the fiscal year ~~which~~ THAT begins July 1, 1994, and for each fiscal year thereafter, that not less than two-thirds of the total student enrollment, including undergraduate and graduate students, at ~~each campus of~~ each state-supported institution of higher education, except the Colorado school of mines, are in-state students as defined in section 23-7-102 (5) and that not less than sixty percent of the total student enrollment, including undergraduate and graduate students, at the Colorado school of mines are in-state students as defined in section 23-7-102 (5). This requirement shall be met if, commencing with the fiscal year that begins July 1, 1995, the fraction of in-state students, as defined in section 23-7-102 (5), enrolled at each state-supported institution of higher education, except the Colorado school of mines, averages not less than two-thirds of the total fiscal year student enrollment for the then-current fiscal year plus the two previous fiscal years. For the Colorado school of mines, this fraction of in-state students shall be not less than three-fifths. Such policies shall be implemented no later than July 1, 1994.

(4) SO LONG AS A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION CONTINUES TO ADMIT ALL IN-STATE, FIRST-TIME FRESHMAN APPLICANTS THAT MEET PUBLISHED GUARANTEED ADMISSIONS CRITERIA, OR, FOR COLORADO SCHOOL OF MINES, SO LONG AS IT CONTINUES TO ABIDE BY THE PROVISION SET FORTH IN SECTION 23-41-104.6 (6) (b), THE CALCULATIONS IN SUBSECTION (1) OF THIS SECTION REGARDING THE PERCENTAGE OF STUDENTS WHO ARE IN-STATE STUDENTS AT A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION SHALL EXCLUDE FOREIGN STUDENTS. FOR PURPOSES OF THIS SUBSECTION (4), "FOREIGN STUDENT" MEANS A STUDENT WHO IS COUNTED AS FOREIGN AND PRESENT IN THE UNITED STATES ON A NONIMMIGRANT VISA.

SECTION 3. 23-3.3-102 (2) and (3), the introductory portion to 23-3.3-102 (3.5), and 23-3.3-102 (4), Colorado Revised Statutes, are amended to read:

23-3.3-102. Assistance program authorized - procedure - audits. (2) The commission shall determine, by guideline, the institutions eligible for participation in the program AND SHALL ANNUALLY DETERMINE THE AMOUNT ALLOCATED TO EACH INSTITUTION.

(3) ~~The commission~~ EACH STATE INSTITUTION shall administer ~~the~~ A FINANCIAL ASSISTANCE program ~~with the assistance of institutions~~ according to policies and procedures established by the ~~commission~~ GOVERNING BOARD OF THE INSTITUTION. EACH PARTICIPATING NONPUBLIC INSTITUTION SHALL ADMINISTER A FINANCIAL ASSISTANCE PROGRAM ACCORDING TO POLICIES AND PROCEDURES ESTABLISHED BY THE COMMISSION. EACH INSTITUTION SHALL FUND ITS ASSISTANCE PROGRAM USING STATE MONEYS ALLOCATED TO THE INSTITUTION AND INSTITUTIONAL MONEYS.

(3.5) Notwithstanding any provision of this article to the contrary, ~~the commission~~ EACH PARTICIPATING INSTITUTION shall adopt policies and procedures to allow a person who meets the following criteria to qualify for financial assistance through the financial assistance programs established pursuant to this article:

(4) Program disbursements shall be handled by the institution subject to audit and review. ~~except that each nonpublic institution of higher education which receives additional financial assistance pursuant to this section, due to the change in the determination of need pursuant to subsection (6) of this section, shall allocate such financial assistance on the basis of need. The change in the determination of need pursuant to said subsection (6) shall in no way reduce the allocation by the Colorado commission on higher education of moneys for merit-based programs to nonpublic institutions of higher education.~~

SECTION 4. Repeal. 23-18-202 (3) (c), Colorado Revised Statutes, is repealed as follows:

23-18-202. College opportunity fund - appropriations -

payment of stipends - reimbursement. (3) (c) ~~If an institution of higher education is designated as an enterprise pursuant to section 23-5-101.7, the institution shall annually allocate at least twenty percent of any increase in undergraduate resident tuition revenues above inflation to need-based financial assistance.~~

SECTION 5. 23-20-111, Colorado Revised Statutes, is amended to read:

23-20-111. Supervisory powers of board. The board of regents has general supervision of the university and control and direction of all funds of and appropriations to the university. ~~except that the controller shall have the authority to promulgate fiscal rules pursuant to section 24-30-202, C.R.S., which shall be applicable to the university and its officers and employees.~~

SECTION 6. 24-30-202 (13) (b), Colorado Revised Statutes, is amended to read:

24-30-202. Procedures - vouchers and warrants - rules - penalties. (13) (b) It is the intent of the general assembly that fiscal rules promulgated by the controller shall be applicable to any institution of higher education; ~~notwithstanding any specific grant of authority to the governing board of such~~ EXCEPT THAT THE GOVERNING BOARD OF AN institution of higher education THAT HAS ADOPTED FISCAL PROCEDURES AND HAS DETERMINED THAT THE FISCAL PROCEDURES PROVIDE ADEQUATE SAFEGUARDS FOR THE PROPER EXPENDITURE OF THE MONEYS OF THE INSTITUTION MAY ELECT TO EXEMPT THE INSTITUTION FROM THE FISCAL RULES PROMULGATED BY THE CONTROLLER PURSUANT TO THIS SECTION AND SHALL NOT BE REQUIRED TO COMPLY WITH THE PROVISIONS OF THIS SUBSECTION (13), SUBSECTION (1), (9), (20.1), (22), OR (26) OF THIS SECTION, OR PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION.

SECTION 7. 24-30-1102 (5), Colorado Revised Statutes, is amended to read:

24-30-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(5) "State agency" means this state or any department, board, bureau, commission, institution, or other agency of the state, ~~including institutions of higher education~~ but shall not include the state board of stock commissioners, created pursuant to section 35-41-101, C.R.S., AND SHALL NOT INCLUDE INSTITUTIONS OF HIGHER EDUCATION.

SECTION 8. 24-37.5-403 (2) (b), Colorado Revised Statutes, is amended to read:

24-37.5-403. Chief information security officer - duties and responsibilities. (2) The chief information security officer shall:

(b) (I) Promulgate rules pursuant to article 4 of this title containing information security policies, standards, and guidelines for such agencies on or before December 31, 2006.

(II) THE RULES PROMULGATED PURSUANT TO THIS PARAGRAPH (b) SHALL NOT APPLY TO INSTITUTIONS OF HIGHER EDUCATION.

SECTION 9. Article 1 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-1-129. Limitation on institution financial reporting. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, AN INSTITUTION OF HIGHER EDUCATION SHALL PROVIDE ONLY AUDITED FINANCIAL STATEMENTS WHEN IT IS REQUIRED TO PROVIDE FINANCIAL DATA REPORTING INFORMATION TO A STATE ENTITY.

SECTION 10. 23-1-106, Colorado Revised Statutes, is amended to read:

23-1-106. Duties and powers of the commission with respect

to capital construction and long-range planning. ~~(1) Except as permitted by subsections (9) and (10) of this section, it is declared to be the policy of the general assembly not to authorize or to acquire sites or initiate any program or activity requiring capital construction for state-supported institutions of higher education unless approved by the commission.~~

~~(2) The commission shall, after consultation with the appropriate governing boards of the state-supported institutions of higher education and the appropriate state administrative agencies, have authority to prescribe uniform policies, procedures, and standards of space utilization for the development and approval of capital construction programs by institutions.~~

~~(3) The commission shall review and approve facility master plans for all state institutions of higher education on land owned or controlled by the state or an institution and capital construction program plans for projects other than those projects constructed pursuant to subsection (9) or (10) of this section. Except for those projects constructed pursuant to subsection (9) or (10) of this section, no capital construction shall commence except in accordance with an approved facility master plan and program plan.~~

~~(4) The commission shall ensure conformity of facilities master planning with approved educational master plans and facility program plans with approved facilities master plans.~~

~~(5) (a) The commission shall approve plans for any capital construction project at any institution, including a community college, regardless of the source of funds; except that the commission need not approve plans for any capital construction project at a local district college or area vocational school or for any capital construction project~~

~~described in subsection (9) or (10) of this section.~~

~~(b) The commission may except from the requirements for program and physical planning any project that shall require less than two million dollars of state moneys.~~

~~(6) (a) The commission shall request annually from each governing board of each state institution of higher education a five-year projection of capital development projects to be constructed but not including those projects constructed pursuant to subsection (9) or (10) of this section. The projection shall include the estimated cost, the method of funding, a schedule for project completion, and the governing board-approved priority for each project. The commission shall determine whether a proposed project is consistent with the role and mission and master planning of the institution and conforms to standards recommended by the commission.~~

~~(b) The commission shall request annually from the governing board of each state institution of higher education a two-year projection of capital construction projects to be constructed pursuant to subsection (9) or (10) of this section and estimated to require total project expenditures exceeding two million dollars. The projection shall include the estimated cost, the method of funding, and a schedule for project completion for each project. An institution shall amend the projection prior to commencing a project that is not included in the institution's most recent projection.~~

~~(7) (a) The commission annually shall prepare a unified, five-year capital improvements report of projects to be constructed, but not including those projects constructed pursuant to subsection (9) or (10) of this section, coordinated with education plans. The commission shall transmit the report to the office of state planning and budgeting, the~~

~~governor, and the general assembly, consistent with the executive budget timetable, together with a recommended priority of funding of capital construction projects for the system of public higher education. The commission shall annually transmit the recommended priority of funding of capital construction projects to the capital development committee no later than November 1 of each year.~~

~~(b) Except as provided in subsection (5) of this section, it is the policy of the general assembly to appropriate funds only for projects approved by the commission.~~

~~(c) (I) The commission annually shall prepare a unified, two-year capital improvements report for projects to be constructed pursuant to subsection (9) or (10) of this section and estimated to require total project expenditures exceeding two million dollars, coordinated with education plans. The commission shall transmit the report to the office of state planning and budgeting, the governor, and the general assembly, consistent with the executive budget timetable.~~

~~(II) (A) Commencing in the 2010 regular legislative session, and in each regular legislative session thereafter, the commission shall submit the two-year projections prepared by each state institution of higher education for the 2010-11 and 2011-12 fiscal years, and for each two-year period thereafter as applicable, to the office of state planning and budgeting and the capital development committee. Beginning in the 2010 regular legislative session and in each regular legislative session thereafter, the capital development committee shall conduct a hearing on the projections and either approve the projections or return the projections to the institution for modification. The commission and the office of state planning and budgeting shall provide the capital development committee with comments concerning each projection.~~

~~(B) A state institution of higher education may submit to the staff of the capital development committee, the commission, and the office of state planning and budgeting an amendment to its approved two-year projection. The capital development committee shall conduct a hearing on the amendment within thirty days after submission during a regular legislative session of the general assembly or within forty-five days after submission during any period that the general assembly is not in regular legislative session. The capital development committee shall either approve the projections or return the projections to the institution for modification. The commission and the office of state planning and budgeting shall provide the capital development committee with comments concerning each amendment.~~

~~(8) Any acquisition of real property by a state-supported institution of higher education that is conditional upon or requires expenditures of state-controlled funds or federal funds shall be subject to the approval of the commission, whether acquisition is by lease-purchase, purchase, gift, or otherwise.~~

~~(9) (a) Except as provided in paragraph (d) of this subsection (9), a capital construction project initiated by the governing board of a state-supported institution of higher education that is contained in the most recent unified, two-year capital improvements project projection approved pursuant to subparagraph (II) of paragraph (c) of subsection (7) of this section, as the projection may be amended from time to time, and that is to be constructed, operated, and maintained solely from cash funds held by the institution shall not be subject to additional review or approval by the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee.~~

~~(b) Except as provided in paragraph (d) of this subsection (9), a~~

~~capital construction project for an academic building initiated by the governing board of a state-supported institution of higher education that is contained in the most recent unified, two-year capital improvements project projection approved pursuant to subparagraph (II) of paragraph (c) of subsection (7) of this section, as the projection may be amended from time to time, and that is to be constructed solely from cash funds held by the institution and operated and maintained from such funds or from state moneys appropriated for such purpose, or both, shall not be subject to additional review or approval by the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee. Any capital construction project subject to this paragraph (b) shall comply with the high performance standard certification program established pursuant to section 24-30-1305, C.R.S.~~

~~(c) Each governing board shall ensure, consistent with its responsibilities as set forth in section 5 (2) of article VIII of the state constitution, that a capital construction project initiated pursuant to this subsection (9) shall be in accordance with its institution's mission, be of a size and scope to provide for the defined program needs, and be designed in accordance with all applicable building codes and accessibility standards.~~

~~(d) (I) The provisions of this subsection (9) shall not apply to a project that is to be constructed in whole or in part using moneys subject to the higher education revenue bond intercept program established pursuant to section 23-5-139.~~

~~(II) Any plan for any such capital construction project that is estimated to require total expenditures of two million dollars or less shall not be subject to review or approval by the commission.~~

~~(10) (a) (I) The commission shall review and approve any plan for~~

~~a capital construction project that is estimated to require total expenditures exceeding two million dollars and that is to be constructed, operated, and maintained solely from cash funds held by the institution that, in whole or in part, are subject to the higher education revenue bond intercept program established pursuant to section 23-5-139.~~

~~(II) The commission shall review and approve any plan for a capital construction project for an academic building that is estimated to require total expenditures exceeding two million dollars, that is to be constructed solely from cash funds held by the institution that, in whole or in part, are subject to the higher education revenue bond intercept program established pursuant to section 23-5-139, and that is operated and maintained from such cash funds or from state moneys appropriated for such purpose, or both. Any capital construction project subject to this subparagraph (II) shall comply with the high performance standard certification program established pursuant to section 24-30-1305, C.R.S.~~

~~(III) Any plan for any such capital construction project that is estimated to require total expenditures of two million dollars or less shall not be subject to review or approval by the commission.~~

~~(b) Upon approval of a plan for a capital construction project pursuant to paragraph (a) of this subsection (10), the commission shall submit the plan to the capital development committee. The capital development committee shall make a recommendation regarding the project to the joint budget committee. Following the receipt of the recommendation, the joint budget committee shall refer its recommendations regarding the project, with written comments, to the commission.~~

~~(10.5) (a) For any project commenced pursuant to subsection (9) or (10) of this section, if, after commencement of construction, the~~

~~governing board of the institution receives an additional gift, grant, or donation for the project, the governing board may amend the project without the approval of the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee so long as the governing board notifies the commission, the office of state planning and budgeting, the capital development committee, and the joint budget committee in writing, explaining how the project has been amended and verifying the receipt of the additional gift, grant, or donation.~~

~~(b) For any project commenced pursuant to subsection (9) or (10) of this section, the governing board may enhance the project in an amount not to exceed fifteen percent of the original estimate of the cost of the project without the approval of the commission, the office of state planning and budgeting, the capital development committee, or the joint budget committee so long as the governing board notifies the commission, the office of state planning and budgeting, the capital development committee, and the joint budget committee in writing, explaining how the project has been enhanced and the source of the moneys for the enhancement.~~

~~(11) (a) Each state institution of higher education shall submit to the commission on or before September 1 of each year a list and description of each project for which an expenditure was made during the immediately preceding fiscal year that:~~

~~(I) Was not subject to review by the commission pursuant to subsection (9) of this section;~~

~~(II) Was approved pursuant to subsection (10) of this section;~~

~~(III) Was estimated to require total expenditures of two million dollars or less; or~~

~~(IV) Was amended or enhanced after commencement of construction pursuant to subsection (10.5) of this section.~~

~~(b) The commission shall submit a compilation of the projects to the capital development committee on or before December 1 of each year.~~

~~(12) Each institution shall submit to the commission a facility management plan or update required by section 24-30-1303.5 (3.5), C.R.S. The commission shall review the facility management plan or update and make recommendations regarding it to the department of personnel.~~

~~(13) The provisions of this section shall not apply to any local junior college district that is not a part of the state system and not eligible to receive any state funds for capital construction pursuant to section 23-71-202 (3).~~ A STATE-SUPPORTED INSTITUTION OF HIGHER EDUCATION SHALL NOTIFY THE COMMISSION AND THE CAPITAL DEVELOPMENT COMMITTEE OF EACH OF ITS CAPITAL CONSTRUCTION PROJECTS.

SECTION 11. 24-37-304 (1) (c.3) (I), Colorado Revised Statutes, is amended to read:

24-37-304. Additional budgeting responsibilities. (1) In addition to the responsibilities enumerated in section 24-37-302, the office of state planning and budgeting shall:

(c.3) (I) Except for projects ~~authorized pursuant~~ SUBJECT to section 23-1-106, ~~(9) or (10),~~ C.R.S., ensure submission of all capital construction and controlled maintenance requests and proposals for the acquisition of capital assets by each state department, institution, and agency to the capital development committee no later than September 1 of each year;

SECTION 12. Repeal. 24-30-1301 (13) (b) (I), Colorado Revised Statutes, is repealed as follows:

24-30-1301. Definitions. As used in this part 13, unless the context otherwise requires:

(13) "State-assisted facility" means a facility constructed, or a major facility constructed or renovated, in whole or in part, with state funds or with funds guaranteed or insured by a state agency; except that, for purposes of section 24-30-1305 (9):

(b) "State-assisted facility" does not include:

(I) ~~A facility specified in section 23-1-106, (9), C.R.S.; or~~

SECTION 13. 24-30-1303 (5) (c), Colorado Revised Statutes, is amended to read:

24-30-1303. Department of personnel - responsibilities. (5) (c) ~~If the executive director determines that the governing board of a state institution of higher education has adopted procedures that adequately meet the safeguards set forth in the requirements of part 14 of this article and article 92 of this title, the executive director may exempt the institution from any of the procedural requirements of part 14 of this article and article 92 of this title in regard to a capital construction project to be constructed pursuant to the provisions of section 23-1-106 (9) or (10), C.R.S.; except that the selection of any contractor to perform professional services as defined in section 24-30-1402 (6) shall be made in accordance with the criteria set forth in section 24-30-1403 (2).~~ A PROJECT SUBJECT TO SECTION 23-1-106, C.R.S., SHALL BE EXEMPT FROM THE PROCEDURAL REQUIREMENTS SET FORTH IN PART 14 OF THIS ARTICLE AND ARTICLE 92 OF THIS TITLE.

SECTION 14. 24-75-303 (3), Colorado Revised Statutes, is amended to read:

24-75-303. Appropriation for capital construction. (3) (a) A capital construction project for a state-supported institution of higher education that is estimated to require total expenditures exceeding two million dollars may not be commenced unless:

(I) The project:

(A) Is to be constructed solely from cash funds held by the institution;

(B) Is to be constructed in whole or in part using moneys subject to the higher education revenue bond intercept program established pursuant to section 23-5-139, C.R.S.; and

(C) Has ~~been approved by the Colorado commission on higher education pursuant to~~ COMPLIED WITH section 23-1-106, ~~(10),~~ C.R.S.; or

(II) (A) ~~The plan for the project was contained in the most recent unified, two-year capital improvements projection provided pursuant to section 23-1-106 (6) (b), C.R.S., as the projection may be amended from time to time;~~

(B) The project has been approved by the governing board of the institution; and

(C) The project is to be constructed, operated, and maintained solely from cash funds held by the institution, or the project is an academic building and is to be constructed solely from cash funds held by the institution, but may be operated or maintained using cash funds or state moneys appropriated for such purposes, or both.

(b) This subsection (3) shall not apply to any capital construction project of a state-supported institution of higher education that requires an appropriation of state moneys from the capital construction fund created in section 24-75-302 (1).

SECTION 15. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August

11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL B

LLS NO. 10-0331.01 Jason Gelender **HOUSE BILL**

HOUSE SPONSORSHIP

Court, Ferrandino

SENATE SPONSORSHIP

Heath, Morse

House Committees **Senate Committees**

A BILL FOR AN ACT

CONCERNING THE CONVERSION OF THE GENERAL FUND RESERVE INTO A STATE BUDGET STABILIZATION RESERVE FUND, AND, IN CONNECTION THEREWITH, INCREASING THE AMOUNT OF THE RESERVE FUND IN CERTAIN FUTURE FISCAL YEARS ABOVE THE AMOUNT OF THE GENERAL FUND RESERVE CURRENTLY REQUIRED FOR SUCH YEARS, REQUIRING RESERVE FUND INTEREST AND INCOME TO BE CREDITED TO THE RESERVE FUND, AND REDUCING THE PERCENTAGE OF ESTIMATED RESERVE FUND DEPLETION THAT WILL REQUIRE THE GOVERNOR TO FORMULATE A PLAN FOR REDUCING GENERAL FUND EXPENDITURES FROM THE PERCENTAGE OF ESTIMATED GENERAL FUND RESERVE DEPLETION THAT CURRENTLY

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.

TRIGGERS THAT REQUIREMENT.

Bill Summary

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

Long-term Fiscal Stability Commission. Section 1 of the bill makes legislative findings and declarations that:

- The state should save substantial amounts of money during periods of significant economic growth in order to prevent drastic cuts in core state services during economic downturns;
- By enacting Senate Bill 09-228, which will, if significant economic growth occurs, increase the amount of the required general fund reserve for future fiscal years, as a first step towards ensuring that the state saves more money in the future, the general assembly has recognized that the state has not saved enough money during past periods of significant economic growth;
- Based on the experience of the state during recent economic downturns, the increased general fund reserve required by Senate Bill 09-228 is likely to prove inadequate to fully stabilize the state budget and prevent drastic cuts in state services during future economic downturns; and
- It is necessary, appropriate, and in the best interest of the state to:
    - Convert the general fund reserve to a state budget stabilization reserve fund;
    - Further increase the amount of general fund revenues that the state is required to save; and
    - Promote fiscal discipline in state government and protect against rapid depletion of the reserve fund by reducing the percentage of estimated reserve fund depletion that will require the governor to formulate a plan for reducing general fund expenditures from the percentage of estimated general fund reserve depletion that currently triggers that requirement.

Section 2 of the bill creates the state budget stabilization reserve fund (fund) and requires fund investment earnings to be credited to the fund. Beginning in FY 2009-10, section 2 also requires increasing amounts of general fund moneys, measured as a percentage of annual general fund appropriations, to be credited to the fund at the end of each fiscal year until the fund balance can be maintained at 15% of general fund appropriations.

Section 3 of the bill reduces the percentage of estimated general fund reserve depletion for a fiscal year that triggers a requirement that the governor formulate a plan for reducing general fund expenditures from 50% of the amount of the existing general fund reserve to the greater of 2% of the amount appropriated for expenditure from the general fund for the fiscal year or one-third the amount of the fund that is replacing the general fund reserve. Section 3 also makes a conforming amendment regarding the trigger for transferring general fund moneys previously credited to the capital construction fund back into the general fund.

Sections 4 through 12 of the bill make conforming amendments necessitated by the conversion of the general fund reserve to the fund.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) (I) Economic conditions in the state constantly change, and periods of significant economic growth are regularly interrupted by economic downturns;

(II) During economic downturns, the amount of state general fund revenues generated by the state income tax and state sales and use taxes, which together account for the vast majority of state general fund revenues, either grow very slowly or decline;

(III) Because economic downturns adversely affect not only state government revenues, but also the economic status of individuals and businesses in the state, the demand for core state services funded with state general fund revenues, including, but not limited to, education, health care, human services, and the justice system, does not decline and instead often increases during such downturns.

(b) The state therefore should save substantial amounts of money during periods of significant economic growth in order to prevent drastic cuts in core state services during economic downturns.

(2) The general assembly further finds and declares that:

(a) By acting during the current economic downturn to enact Senate Bill 09-228, which will, if significant economic growth occurs, increase the amount of general fund moneys that the state must retain as a reserve for each fiscal year, the general assembly has recognized that the state has not saved sufficient amounts of money during past periods of significant economic growth to avoid drastic cuts in core state services during economic downturns and has taken a first step towards ensuring that the state saves more money in the future.

(b) Based on the experience of the state during recent economic downturns, even the increased general fund reserve required by Senate Bill 09-228 is likely to prove inadequate to fully stabilize the state budget and prevent drastic cuts in state services during future economic downturns.

(c) Accordingly, it is necessary, appropriate, and in the best interest of the state to:

(I) Convert the general fund reserve into a state budget stabilization reserve fund;

(II) Further increase the amount of general fund revenues that the state is required to save; and

(III) As the amount of general fund revenues increases, promote fiscal discipline in state government and protect against rapid depletion of the reserve fund by reducing the percentage of estimated reserve fund depletion that will require the governor to formulate a plan for reducing general fund expenditures from the percentage of estimated general fund reserve depletion that currently triggers that requirement.

SECTION 2. 24-75-201.2 (1) (a) and (2), Colorado Revised Statutes, are amended, and the said 24-75-201.2 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

24-75-201.2. Restriction on state spending - state budget stabilization reserve fund - creation - funding requirements. (1) (a) For purposes of determining ~~unrestricted general fund year-end balances as required in section 24-75-201.1~~ THE AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SUBSECTION (3) OF THIS SECTION at the end of any fiscal year, moneys budgeted or allocated for possible state liability, pending the determination of a legal action, shall not be included.

(2) For purposes of determining ~~the unrestricted general fund year-end balances as required in section 24-75-201.1~~ THE AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SUBSECTION (3) OF THIS SECTION AT THE END OF ANY FISCAL YEAR, the year-end balance of the federal revenue sharing trust fund and all moneys received from the general and special revenue programs of the federal government shall be included in said balances.

(3) (a) THE STATE BUDGET STABILIZATION RESERVE FUND IS HEREBY CREATED IN THE STATE TREASURY. ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO AND REMAIN IN THE FUND. ALL MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSE OF BUDGET STABILIZATION DURING ECONOMIC DOWNTURNS.

(b) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), BEGINNING WITH THE FISCAL YEAR 2009-10, GENERAL FUND MONEYS SHALL BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND IN AT LEAST THE FOLLOWING AMOUNTS:

(A) FOR THE FISCAL YEAR 2009-10, TWO PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THAT FISCAL YEAR;

(B) FOR THE FISCAL YEARS 2010-11 AND 2011-12, THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO FOUR PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THE APPLICABLE FISCAL YEAR;

(C) FOR THE FISCAL YEAR 2012-13, THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO FOUR AND ONE-HALF PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THAT FISCAL YEAR;

(D) FOR THE FISCAL YEAR 2013-14, THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO FIVE PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THAT FISCAL YEAR;

(E) FOR THE FISCAL YEAR 2014-15, THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO FIVE AND ONE-HALF PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THAT FISCAL YEAR;

(F) FOR THE FISCAL YEAR 2015-16, THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO SIX PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THAT FISCAL YEAR;

(G) FOR THE FISCAL YEAR 2016-17, THE AMOUNT NEEDED TO

BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO SIX AND ONE-HALF PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THAT FISCAL YEAR;

(H) FOR THE FISCAL YEAR 2017-18 AND FOR EACH SUCCEEDING FISCAL YEAR, THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO THE LESSER OF FIFTEEN PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THE FISCAL YEAR OR A PERCENTAGE OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THE FISCAL YEAR THAT IS AT LEAST EQUAL TO THE PERCENTAGE OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THE PRIOR FISCAL YEAR AT WHICH THE BALANCE OF THE FUND WAS REQUIRED TO BE MAINTAINED FOR THE PRIOR FISCAL YEAR PLUS ONE PERCENTAGE POINT.

(II) (A) NOTWITHSTANDING SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), IF COLORADO PERSONAL INCOME INCREASES BY LESS THAN FIVE PERCENT FROM THE CALENDAR YEAR 2011 THROUGH THE CALENDAR YEAR 2012, THE AMOUNT REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND FOR FISCAL YEAR 2012-13 AND FOR EACH SUCCEEDING FISCAL YEAR UNTIL THE NEXT FISCAL YEAR DURING WHICH COLORADO PERSONAL INCOME INCREASES BY AT LEAST FIVE PERCENT SHALL BE THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO FOUR PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THE APPLICABLE FISCAL YEAR. FOR THE NEXT FISCAL YEAR DURING WHICH COLORADO PERSONAL INCOME INCREASES BY AT LEAST FIVE PERCENT, THE AMOUNT REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND SHALL BE FOUR AND ONE-HALF PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE

FROM THE GENERAL FUND FOR THE FISCAL YEAR. FOR PURPOSES OF THIS SUBPARAGRAPH (II), COLORADO PERSONAL INCOME SHALL BE CONSIDERED TO INCREASE BY AT LEAST FIVE PERCENT DURING A FISCAL YEAR IF, FROM THE CALENDAR YEAR THAT COMMENCES EIGHTEEN MONTHS PRIOR TO THE FIRST DAY OF THE FISCAL YEAR, AND TO THE NEXT CALENDAR YEAR, COLORADO PERSONAL INCOME INCREASES BY AT LEAST FIVE PERCENT.

(B) THE STATE BUDGET STABILIZATION RESERVE FUND FUNDING REQUIREMENTS SET FORTH IN SUB-SUBPARAGRAPHS (D) TO (H) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE DELAYED BY THE NUMBER OF FISCAL YEARS FOR WHICH THE AMOUNT REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND REMAINS THE AMOUNT NEEDED TO BRING THE BALANCE OF THE FUND TO AN AMOUNT EQUAL TO FOUR PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II).

(C) AS USED IN THIS SUBPARAGRAPH (II), "COLORADO PERSONAL INCOME" MEANS THE TOTAL PERSONAL INCOME FOR COLORADO, AS DEFINED AND OFFICIALLY REPORTED BY THE BUREAU OF ECONOMIC ANALYSIS IN THE UNITED STATES DEPARTMENT OF COMMERCE.

(4) FOR THE 2009-10 FISCAL YEAR AND FOR EACH FISCAL YEAR THEREAFTER, THE BASIS FOR THE CALCULATION OF THE AMOUNT REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND PURSUANT TO PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION SHALL INCLUDE ALL APPROPRIATIONS FOR EXPENDITURE FROM THE GENERAL FUND FOR SUCH FISCAL YEAR, EXCEPT FOR ANY APPROPRIATIONS FOR EXPENDITURE FROM THE GENERAL FUND DUE TO A STATE FISCAL EMERGENCY AS PROVIDED FOR IN SECTION 24-75-201.1 (1)

(a) (IV).

SECTION 3. 24-75-201.5 (1) and (4), Colorado Revised Statutes, are amended to read:

24-75-201.5. Revenue shortfalls - required actions by the governor with respect to the state budget stabilization reserve fund. (1) ~~(a) Except as provided in paragraphs (c) and (d) of this subsection (1),~~ Whenever the revenue estimate for the current fiscal year, prepared in accordance with section 24-75-201.3 (2), indicates that THE AMOUNT OF GENERAL FUND REVENUES AVAILABLE IN THE GENERAL FUND WILL BE INSUFFICIENT TO FUND ALL general fund expenditures for ~~such~~ THE fiscal year based on appropriations then in effect AND THAT FUNDING ALL SUCH EXPENDITURES will result in the use of ~~one-half~~ MONEYS IN THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SECTION 24-75-201.2 (3) IN AN AMOUNT EQUAL TO AT LEAST THE GREATER OF TWO PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THE FISCAL YEAR OR ONE-THIRD or more of the ~~reserve required by section 24-75-201.1 (1) (d)~~ BALANCE OF THE STATE BUDGET STABILIZATION RESERVE FUND, the governor shall formulate a plan for reducing ~~such~~ THE general fund expenditures so that ~~said reserve~~ THE BALANCE OF THE STATE BUDGET STABILIZATION RESERVE FUND, as of the close of the fiscal year, will be at least ~~one-half~~ THE LESSER of the amount required by ~~said section 24-75-201.1 (1) (d)~~ SECTION 24-75-201.2 (3) LESS TWO PERCENT OF THE AMOUNT APPROPRIATED FOR EXPENDITURE FROM THE GENERAL FUND FOR THE FISCAL YEAR OR TWO-THIRDS OF THE AMOUNT REQUIRED BY SECTION 24-75-201.2 (3). The governor shall promptly notify the general assembly of ~~such~~ THE plan. ~~Such~~ THE plan shall be promptly implemented by the governor, using the procedures set forth in section 24-2-102 (4) or 24-50-109.5 or any other lawful means.

~~(b) Repealed.~~

~~(c) (I) Notwithstanding and in lieu of the provisions of paragraph (a) of this subsection (1), for the fiscal year 2001-02 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2), in June of 2002, indicates that general fund expenditures for such fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available for expenditure for such fiscal year, the state treasurer and the controller, upon the written order of the governor, shall transfer to the general fund, from time to time during the period beginning on June 20, 2002, and ending on June 30, 2002, from the tobacco litigation settlement trust fund created in section 24-22-115.5 (2), the unclaimed property trust fund created in section 38-13-116.5, C.R.S., or the major medical insurance fund created in section 8-46-202 (1) (a), C.R.S., or from all of such funds, such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom for any lawful purpose.~~

~~(II) Effective July 1, 2002, the state treasurer and the controller shall transfer moneys from the general fund to the tobacco litigation settlement trust fund and the major medical insurance fund in order to restore to said funds any amount transferred therefrom pursuant to subparagraph (I) of this paragraph (c).~~

~~(d) (I) For the fiscal year 2002-03 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2), in June, September, or December of 2002 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will result in the use of one-half or more of the reserve required by section 24-75-201.1 (1) (d), the governor shall either:~~

~~(A) Formulate and implement a plan pursuant to paragraph (a) of~~

~~this subsection (1);~~

~~(B) Upon written order, direct the state treasurer and controller to transfer, and said state treasurer and controller shall transfer, to the general fund, from time to time during the period beginning on July 1, 2002, and ending January 1, 2003, from any or all of the funds described in subparagraph (II) of this paragraph (d), such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom for any lawful purpose and to ensure that said reserve during said period will be at least one-half of the amount required by section 24-75-201.1 (1) (d); or~~

~~(C) Both formulate and implement a plan pursuant to paragraph (a) of this subsection (1) and issue a written order pursuant to sub-subparagraph (B) of this subparagraph (I) to ensure that said reserve during said period will be at least one-half of the amount required by section 24-75-201.1 (1) (d).~~

~~(II) The transfer or transfers described in subparagraph (I) of this paragraph (d) shall be made from one or more of the following funds:~~

~~(A) The employment support fund created in section 8-77-109 (1), C.R.S.;~~

~~(B) The tobacco litigation settlement trust fund created in section 24-22-115.5 (2);~~

~~(C) The unclaimed property trust fund created in section 38-13-116.5, C.R.S.;~~

~~(D) The major medical insurance fund created in section 8-46-202 (1) (a), C.R.S., not to exceed seventy-five million dollars.~~

~~(III) For the fiscal year 2002-03 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June of 2003 indicates that general fund expenditures for such fiscal year based on~~

~~appropriations then in effect will exceed the amount of general fund revenues available, excluding the reserve required by section 24-75-101.1 (1) (d), the governor shall, from time to time during the period beginning on June 20, 2003, and ending on June 30, 2003:~~

~~(A) Upon written order, direct the treasurer to disburse an amount of general fund moneys otherwise comprising such reserve as is necessary to cover any appropriations then in effect made from the general fund for which general fund revenues would not otherwise be available, not to exceed one hundred thirty-two million dollars; and~~

~~(B) In the event that the disbursements made pursuant to sub-subparagraph (A) of this subparagraph (III) are insufficient to cover any such appropriations, upon written order, direct the state treasurer and controller to transfer, and said state treasurer and controller shall transfer, to the general fund, from the local government severance tax fund created in section 39-29-110 (1) (a) (I), C.R.S., or the local government mineral impact fund created in section 34-63-102 (5) (a) (I), C.R.S., or both, such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom; except that the amount transferred from the local government severance tax fund pursuant to this sub-subparagraph (B) shall not exceed eighteen million dollars and the amount transferred from the local government mineral impact fund pursuant to this sub-subparagraph (B) shall not exceed nine million dollars.~~

~~(e) For the fiscal year 2003-04 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June of 2004 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available, excluding the reserve required by section 24-75-201.1~~

~~(1) (d), the governor shall, from time to time during the period beginning on June 20, 2004, and ending on June 30, 2004, upon written order, direct the state treasurer to disburse an amount of general fund moneys otherwise comprising such reserve as is necessary to cover any appropriations then in effect made from the general fund for which general fund revenues would not otherwise be available, not to exceed forty-eight million dollars.~~

~~(f) For the fiscal year 2005-06 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June, September, or December of 2005 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will result in the use of one-half or more of the reserve required by section 24-75-201.1 (1) (d), the governor shall either:~~

~~(I) Formulate and implement a plan pursuant to paragraph (a) of this subsection (1); or~~

~~(II) Upon written order, direct the executive director of the department of personnel to attempt to sell a legal interest in one or more eligible state facilities pursuant to section 24-82-1102, in order that the net proceeds from such sale may be deposited in the general fund to be used for general fund expenditures and retained as part of the reserve required by section 24-75-201.1 (1) (d). The executive director may sell a legal interest in as many eligible state facilities as is necessary to ensure that the appropriations then in effect will result in the use of less than one-half of the reserve required by section 24-75-201.1 (1) (d), but in no case shall the executive director sell a legal interest in an eligible state facility if, based on the appropriations then in effect, the net proceeds from such sale would cause the statutory reserve to exceed the amount required by section 24-75-201.1 (1) (d).~~

~~(g) (I) For the fiscal year 2008-09 only, if the revenue estimate prepared in accordance with section 24-75-201.3 (2) in June 2009 indicates that general fund expenditures for such fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available for expenditure for such fiscal year, the state treasurer and the controller, upon the written order of the governor, shall transfer to the general fund on June 30, 2009, from any or all of such funds described in subparagraph (II) of this paragraph (g), such amounts as are required to permit prompt disbursement from the general fund of any appropriation made therefrom for any lawful purpose.~~

~~(II) The transfer or transfers described in subparagraph (I) of this paragraph (g) shall be made from one or more of the following funds:~~

~~(A) The employment support fund created in section 8-77-109 (1), C.R.S., not to exceed twenty-five million dollars;~~

~~(B) The tobacco litigation settlement cash fund created in section 24-22-115 (1) (a), not to exceed eighty-four million six hundred thousand dollars;~~

~~(C) The local government mineral impact fund created in section 34-63-102 (5) (a) (I), C.R.S., not to exceed seventy-two million dollars;~~

~~(D) The Colorado water conservation board construction fund created in section 37-60-121 (1) (a), C.R.S., not to exceed sixty million dollars;~~

~~(E) The unclaimed property trust fund created in section 38-13-116.5 (1) (a), C.R.S., not to exceed one hundred million dollars;~~

~~(F) The perpetual base account of the severance tax trust fund created in section 39-29-109 (2) (a), C.R.S., not to exceed seventy-five million dollars;~~

~~(G) The operational account of the severance tax trust fund~~

~~created in section 39-29-109 (2) (b), C.R.S., not to exceed twenty-one million three hundred thousand dollars;~~

~~(H) The local government severance tax fund created in section 39-29-110 (1) (a) (I), C.R.S., not to exceed one hundred twenty-eight million dollars.~~

~~(III) Effective July 1, 2009, the state treasurer and the controller shall transfer moneys from the general fund to any or all funds described in subparagraph (II) of this paragraph (g) in order to restore to said funds any amount transferred therefrom pursuant to subparagraph (I) of this paragraph (g).~~

(4) Whenever the governor has formulated and implemented a plan to reduce general fund expenditures in accordance with subsection (1) of this section, and ~~such~~ THE plan reduces general fund expenditures in an amount equal to or greater than THE GREATER OF one percent of all general fund appropriations for the fiscal year OR ONE-SIXTH OF THE AMOUNT OF THE STATE BUDGET STABILIZATION RESERVE FUND REQUIRED BY SECTION 24-75-201.2 (3), the governor, after consultation with the capital development committee and the joint budget committee, may transfer general fund moneys from the capital construction fund into the general fund. Pursuant to this subsection (4), the governor ~~will~~ SHALL restrict the capital construction projects in the reverse order of the priorities as established by the capital development committee unless ANOTHER ORDER OF RESTRICTION IS approved by the capital development committee and the joint budget committee.

SECTION 4. Repeal. 24-75-201.1 (1) (c) (V), (1) (d), (1) (e), and (2), Colorado Revised Statutes, are repealed as follows:

24-75-201.1. Restriction on state appropriations. (1) (c) (V) ~~For the fiscal year 1989-90 and each fiscal year thereafter~~

~~ending with the fiscal year 1990-91, fifty percent of general fund revenues in excess of general fund appropriations, after retention of the reserve as required by paragraph (d) of this subsection (1), shall be transferred to the capital construction fund as of the last day of the fiscal year. The general assembly may appropriate such funds for capital construction purposes during the regular legislative session next following the actual transfer of moneys thereto; except that, for the fiscal year 1989-90 only, the general assembly may appropriate such funds during the regular legislative session held in 1990 for the purpose of alleviating prison overcrowding for the fiscal year 1989-90 or for any future fiscal year and may appropriate such funds for any other capital construction purposes during the regular legislative session next following the actual transfer of moneys to the capital construction fund. General fund revenues in excess of general fund appropriations and the required reserve which are not transferred to the capital construction fund as specified in this subparagraph (V) shall be available for appropriation for the fiscal year in which the excess is realized or for any future fiscal year, subject to the limitation on general fund appropriations set forth in paragraph (a) of this subsection (1). For the purposes of applying this subparagraph (V) to the fiscal years 1990-91 and 1991-92, the required reserve shall be considered four percent of the amount appropriated for expenditure from the general fund, notwithstanding the actual percentage reserve requirement specified in subparagraph (IV) of paragraph (d) of this subsection (1).~~

(d) ~~Except as otherwise provided in paragraph (e) of this subsection (1), for each fiscal year, unrestricted general fund year-end balances shall be retained as a reserve in the following amounts:~~

~~(I) For fiscal years 1985-86 and 1986-87, five percent of the~~

~~amount appropriated for expenditure from the general fund for the fiscal year;~~

~~(II) For the fiscal year 1987-88, six percent of the amount appropriated for expenditure from the general fund for that fiscal year;~~

~~(III) For the fiscal year 1988-89 and each fiscal year thereafter ending with the fiscal year 2011-12, except for the fiscal years 1990-91, 1991-92, 1992-93, 2001-02, 2002-03, 2003-04, 2006-07, 2008-09, and 2009-10, as provided in subparagraphs (IV), (V), (VI), (VII), (VIII), (IX), (X), and (XI) of this paragraph (d), four percent of the amount appropriated for expenditure from the general fund for that fiscal year;~~

~~(IV) For the fiscal years 1990-91 and 1991-92, three percent of the amount appropriated for expenditure from the general fund for that fiscal year. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to three percent for the fiscal year 1990-91, as provided in this subparagraph (IV), may be appropriated only for the purpose of alleviating prison overcrowding, and any such appropriation shall not be subject to the limitation on general fund appropriations set forth in paragraph (a) of this subsection (1). The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to three percent for the fiscal year 1991-92, as provided in this subparagraph (IV), may be appropriated for any lawful purpose.~~

~~(V) For the fiscal year 1992-93, three percent of the amount appropriated for expenditure from the general fund for that fiscal year reduced by fourteen million dollars. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to the amount provided in this~~

~~subparagraph (V) may be appropriated during the fiscal year 1992-93 for any lawful purpose.~~

~~(VI) For the fiscal year 2001-02, no percentage of the amount appropriated for expenditure from the general fund for that fiscal year, as no reserve shall be required for said fiscal year. The additional amount of general fund moneys made available for appropriation by the elimination of the required reserve from four percent for the fiscal year 2001-02, as provided in this subparagraph (VI), may be appropriated for any lawful purpose.~~

~~(VII) For the fiscal year 2002-03, three percent of the amount appropriated for expenditure from the general fund for that fiscal year reduced by thirty-one million one hundred seventy-five thousand dollars and as further reduced by the amount of general fund moneys comprising such reserve that are disbursed pursuant to section 24-75-201.5 (1) (d) (III) (A). The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to three percent reduced by thirty-one million one hundred seventy-five thousand dollars may be appropriated during the fiscal year 2002-03 for any lawful purpose.~~

~~(VIII) For the fiscal year 2003-04, four percent of the amount appropriated for expenditure from the general fund for that fiscal year reduced by the amount of general fund moneys comprising such reserve that are disbursed pursuant to section 24-75-201.5 (1) (e).~~

~~(IX) For the fiscal year 2006-07, if the resources of the general fund are inadequate to meet the reserve required by subparagraph (III) of this paragraph (d), the state controller shall accrue a transfer from the capital construction fund to the general fund in the amount necessary to meet the reserve requirement of subparagraph (III) of this paragraph (d)~~

~~up to thirty million dollars. The requirements of this subparagraph (IX) shall be applied before the requirements of section 39-26-123 (4) (a) (VI) (B), C.R.S.~~

~~(X) For the fiscal year 2008-09:~~

~~(A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (X), two percent of the amount appropriated for expenditure from the general fund for that fiscal year. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to two percent may be appropriated during the fiscal year 2008-09 for any lawful purpose.~~

~~(B) If the revenue estimate prepared for the fiscal year 2008-09 in accordance with section 24-75-201.3 (2) in June of 2009 indicates that general fund expenditures for that fiscal year based on appropriations then in effect will exceed the amount of general fund revenues available, excluding the reserve required by sub-subparagraph (A) of this subparagraph (X), upon written order, the governor may further reduce the required reserve from two percent to either a lower percentage or to a zero percentage as is necessary to cover to the greatest extent possible any appropriations then in effect made from the general fund for which general fund moneys would not otherwise be available comprising such reserve.~~

~~(XI) For the fiscal year 2009-10, two percent of the amount appropriated for expenditure from the general fund for that fiscal year. The additional amount of general fund moneys made available for appropriation by the reduction in the required reserve from four percent to two percent may be appropriated during the fiscal year 2009-10 for any lawful purpose.~~

~~(XII) For the fiscal year 2012-13, four and one-half percent of the~~

~~amount appropriated for expenditure from the general fund for that fiscal year;~~

~~(XIII) For the fiscal year 2013-14, five percent of the amount appropriated for expenditure from the general fund for that fiscal year;~~

~~(XIV) For the fiscal year 2014-15, five and one-half percent of the amount appropriated for expenditure from the general fund for that fiscal year;~~

~~(XV) For the fiscal year 2015-16, six percent of the amount appropriated for expenditure from the general fund for that fiscal year;~~

~~(XVI) For the fiscal year 2016-17 and each fiscal year thereafter, at least six and one-half percent of the amount appropriated for expenditure from the general fund for that fiscal year.~~

~~(e) (I) Subparagraph (XII) of paragraph (d) of this subsection (1) shall not apply in the fiscal year 2012-13 if Colorado personal income increases by less than five percent from the calendar year 2011 to the calendar year 2012. In such case, the unrestricted general fund year-end balance for fiscal year 2012-13 shall be four percent of the amount appropriated for expenditure from the general fund for that fiscal year, and the annual reserve required for each succeeding fiscal year shall remain the same until the next fiscal year during which Colorado personal income increases by at least five percent. For such fiscal year during which Colorado personal income increases by at least five percent, the unrestricted general fund year-end balance retained as a reserve shall be four and one-half percent. For purposes of this subparagraph (I), Colorado personal income shall be considered to increase by at least five percent during a given fiscal year if, from the calendar year that commences eighteen months prior to the first day of the fiscal year, and to the next calendar year, Colorado personal income increases by at least~~

~~five percent.~~

~~(II) The reserve requirements set forth in subparagraphs (XIII), (XIV), (XV), and (XVI) of paragraph (d) of this subsection (1) shall be delayed by the number of fiscal years that the reserve is four percent pursuant to subparagraph (I) of this paragraph (e).~~

~~(III) As used in this paragraph (e), "Colorado personal income" means the total personal income for Colorado, as defined and officially reported by the bureau of economic analysis in the United States department of commerce.~~

(2) ~~For each fiscal year ending with the 1985-86 fiscal year, the basis for the calculation of the percentage for the reserve as specified in subsection (1) of this section shall include all appropriations for expenditures and disbursements authorized by law from the general fund, including tax relief appropriations and other expenditures made in accordance with the provisions of subsection (1) of this section. For the 1986-87 fiscal year and each fiscal year thereafter ending with the fiscal year 1990-91, the basis for the calculation of the reserve as specified in paragraph (d) of subsection (1) of this section shall include all appropriations for expenditure from the general fund for such fiscal year but shall not include the fifty percent of excess revenues transferred from the general fund to the capital construction fund pursuant to paragraph (c) of subsection (1) of this section. For the 1991-92 fiscal year and each fiscal year thereafter, the basis for the calculation of the reserve as specified in paragraph (d) of subsection (1) of this section shall include all appropriations for expenditure from the general fund for such fiscal year, except for any appropriations for expenditure from the general fund due to a state fiscal emergency as provided for in subparagraph (IV) of paragraph (a) of subsection (1) of this section.~~

SECTION 5. 12-47.1-701 (4.5) (b), Colorado Revised Statutes, is amended to read:

12-47.1-701. Limited gaming fund. (4.5) (b) If, based on the revenue forecast prepared by the staff of the legislative council in June of any fiscal year, the state treasurer determines that the amount of general fund revenues for the fiscal year will be insufficient to allow the maximum amount of general fund appropriations permitted by section 24-75-201.1 (1) (a), C.R.S., to be made AND THE FULL AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SECTION 24-75-201.2 (3), C.R.S., PURSUANT TO SAID SECTION TO BE SO CREDITED for the fiscal year, the state treasurer, at the end of the fiscal year, shall transfer to the general fund from the moneys that would otherwise be transferred to the innovative higher education research fund pursuant to paragraph (a) of this subsection (4.5) an amount equal to the lesser of the full amount that would otherwise be transferred to the innovative higher education research fund or the amount necessary to allow the maximum amount of general fund appropriations to be made for the fiscal year.

SECTION 6. 23-19.9-102 (2) (b) (II), Colorado Revised Statutes, is amended to read:

23-19.9-102. Higher education federal mineral lease revenues fund - higher education maintenance and reserve fund - creation - sources of revenues - use. (2) (b) (II) If, at any time during a fiscal year, the most recent available quarterly revenue estimate prepared by the staff of the legislative council indicates that the amount of total general fund revenues for the fiscal year will not be sufficient to allow the state to ~~maintain the four percent or higher reserve required by section 24-75-201.1 (1), C.R.S.~~ CREDIT TO THE STATE BUDGET STABILIZATION

RESERVE FUND CREATED IN SECTION 24-75-201.2 (3), C.R.S., THE FULL AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE FUND PURSUANT TO SAID SECTION, the general assembly may make supplemental appropriations of principal of the maintenance and reserve fund or the state controller may allow overexpenditures to be made from principal of the maintenance and reserve fund pursuant to and in accordance with the requirements of section 24-75-111, C.R.S., in order to offset any reduction in the amount of one or more general fund appropriations for the fiscal year for operating expenses of state-supported institutions of higher education that resulted from the insufficiency in the amount of total general fund revenues.

SECTION 7. 24-36-113 (7), Colorado Revised Statutes, is amended to read:

24-36-113. Investment of state moneys - limitations. (7) Notwithstanding any restrictions on the investment of state moneys set forth in this section or in any other provision of law, the state treasurer may invest moneys transferred on July 5, 2002, from the tobacco litigation settlement trust fund to the general fund pursuant to section 24-75-201.5 (1) (d), AS SAID SECTION EXISTED PRIOR TO ITS REPEAL IN 2010, in any manner in which the trust fund moneys may be invested pursuant to section 24-22-115.5 (3) (a).

SECTION 8. 24-75-109 (5), Colorado Revised Statutes, is amended to read:

24-75-109. Controller may allow expenditures in excess of appropriations - limitations - appropriations for subsequent fiscal year restricted - repeal. (5) The limitation on general fund appropriations and the requirement for ~~a general fund reserve contained in section 24-75-201.1~~ THE FUNDING OF THE STATE BUDGET

STABILIZATION RESERVE FUND CREATED IN SECTION 24-75-201.2 (3) shall not apply to overexpenditures from the general fund for medicaid programs allowed pursuant to paragraph (a) of subsection (1) of this section or to supplemental general fund appropriations for medicaid programs enacted pursuant to subsection (4) of this section. Overexpenditures for all other purposes allowed pursuant to subsection (1) of this section and supplemental general fund appropriations for all other purposes enacted pursuant to subsection (4) of this section shall be considered appropriations for the fiscal year in which the overexpenditure was allowed and shall accordingly be subject to the limitations and requirements of ~~section 24-75-201.1~~ SECTIONS 24-75-201.1 AND 24-75-201.2.

SECTION 9. 24-75-111 (6), Colorado Revised Statutes, is amended to read:

24-75-111. Additional authority for controller to allow expenditures in excess of appropriations - limitations - appropriations for subsequent fiscal year restricted. (6) Overexpenditures allowed pursuant to the provisions of subsection (1) of this section and supplemental general fund appropriations enacted pursuant to subsection (5) of this section shall be considered appropriations for the fiscal year in which the overexpenditure was allowed and shall accordingly be subject to the limitations and requirements of ~~section 24-75-201.1~~ SECTIONS 24-75-201.1 AND 24-75-201.2.

SECTION 10. The introductory portion to 24-75-302 (2), Colorado Revised Statutes, is amended to read:

24-75-302. Capital construction fund - capital assessment fees - calculation. (2) As of July 1, 1988, and July 1 of each year thereafter through July 1, 2012, a sum as specified in this subsection (2) shall accrue to the capital construction fund. The state treasurer and the controller shall transfer ~~such~~ THE sum out of the general fund and into the capital construction fund as moneys become available in the general fund during the fiscal year beginning on said July 1. Transfers between funds pursuant to this subsection (2) shall not be deemed to be appropriations subject to the limitations AND REQUIREMENTS of ~~section 24-75-201.1~~ SECTIONS 24-75-201.1 AND 24-75-201.2. The amount that shall accrue pursuant to this subsection (2) shall be as follows:

SECTION 11. The introductory portions to 39-26-123 (4) (a) (IV) and (4) (a) (V) and 39-26-123 (4) (a) (VI) (B), Colorado Revised Statutes, are amended to read:

39-26-123. Receipts - disposition - transfers of general fund surplus - sales and use tax holding fund - creation - definitions - repeal. (4) (a) Except as otherwise provided in sub-subparagraph (B) of subparagraph (VI) of this paragraph (a) and subsection (4.5) of this section, all moneys in the sales and use tax holding fund shall be transferred to the highway users tax fund, as follows:

(IV) If the revenue estimate prepared by the staff of the legislative council in December of state fiscal year 2017-18 or in December of any succeeding state fiscal year indicates that the amount of total general fund revenues for the state fiscal year will be sufficient to ~~maintain the four percent or higher reserve required by section 24-75-201.1 (1), C.R.S.~~ ALLOW THE FULL AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SECTION 24-75-201.2 (3), C.R.S., FOR THE FISCAL YEAR PURSUANT TO SAID SECTION TO BE SO CREDITED, on February 1 of the fiscal year the state treasurer shall transfer from the sales and use tax holding fund to the highway users tax fund an amount equal to the lesser of:

(V) If the revenue estimate prepared by the staff of the legislative council in March of state fiscal year 2017-18 or in March of any succeeding state fiscal year indicates that the amount of total general fund revenues for the state fiscal year will be sufficient to ~~maintain the four percent or higher reserve required by section 24-75-201.1 (1), C.R.S.~~ ALLOW THE FULL AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SECTION 24-75-201.2 (3), C.R.S., FOR THE FISCAL YEAR PURSUANT TO SAID SECTION TO BE SO CREDITED, on April 15 of the fiscal year the state treasurer shall transfer from the sales and use tax holding fund to the highway users tax fund the lesser of:

(VI) (B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (VI), the state controller shall reduce the amount accrued to the highway users tax fund pursuant to said sub-subparagraph and accrue moneys in the sales and use tax holding fund to the general fund to the extent necessary to ensure that the amount of general fund revenues for the state fiscal year is sufficient to ~~maintain the four percent reserve required by section 24-75-201.1 (1), C.R.S.~~ ALLOW THE FULL AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SECTION 24-75-201.2 (3), C.R.S., FOR THE FISCAL YEAR PURSUANT TO SAID SECTION TO BE SO CREDITED.

SECTION 12. 40-9.7-108 (3) (b) (I), Colorado Revised Statutes, is amended to read:

40-9.7-108. Colorado clean energy development authority fund - creation - authorization of projects. (3) (b) (I) Notwithstanding the provisions of subsection (4) of this section, and subject to the limitations set forth in paragraphs (e) and (f) of this subsection (3), the authority, with prior approval by enacted legislation of the general assembly in accordance with paragraph (c) of this subsection (3), may agree in any resolution or trust indenture authorizing the issuance of bonds that, if the balance in the fund pledged as a reserve for the payment of all or any portion of bonds or obligations of the authority under any bond, financing agreement, contract, agreement, or other obligation of the authority authorized by this article falls below the debt service reserve fund requirement established in such resolution or trust indenture, the board shall, on or before January 1 of each year, make and deliver to the governor a certificate stating the sum, if any, required to restore the debt service reserve fund to the reserve fund requirement and, if the project is located partly or wholly outside the state, the percentage of the total value of the project that is located within the state. If the governor determines that the sum of the amount of anticipated general fund revenues for the fiscal year in which the board delivers a certificate to the governor and the amount of available moneys in or to be credited to state funds other than the general fund for the fiscal year are sufficient to allow the general assembly to make general fund appropriations, ~~maintain the four percent or higher reserve required by section 24-75-201.1 (1) (d), C.R.S.~~ ALLOW THE FULL AMOUNT OF GENERAL FUND MONEYS REQUIRED TO BE CREDITED TO THE STATE BUDGET STABILIZATION RESERVE FUND CREATED IN SECTION 24-75-201.2 (3), C.R.S., FOR THE FISCAL YEAR PURSUANT TO SAID SECTION TO BE SO CREDITED, and restore the debt service reserve fund to the reserve fund requirement, the governor shall transmit to the general assembly a request for the amount, if any, required to restore the debt service reserve fund to the debt service reserve fund requirement; except that, if the project is located partly or wholly outside the state, the governor shall transmit to the general assembly only a request for an amount equal to the product of the amount, if any, required to restore the debt service reserve fund to the debt service reserve fund requirement and the percentage of the total value of the project located within the state. The general assembly may, but shall not be required to, make any appropriations so requested. All sums appropriated and paid by the general assembly for the restoration shall be deposited by the authority in the debt service reserve fund. Nothing in this section shall create or constitute a debt or liability of the state.

SECTION 13. Effective date. This act shall take effect June 30, 2010.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL C

LLS NO. 10-0335.01 Jason Gelender **HOUSE BILL**

HOUSE SPONSORSHIP

Ferrandino, Court, Gerou

SENATE SPONSORSHIP

Morse, Heath, Brophy

House Committees **Senate Committees**

A BILL FOR AN ACT

CONCERNING AUTHORIZATION FOR AGENCIES OF THE STATE TO ENTER INTO PUBLIC-PRIVATE INITIATIVE AGREEMENTS WITH NONPROFIT ENTITIES.

Bill Summary

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

Long-term Fiscal Stability Commission. Using the existing public-private initiative program for the department of transportation as a model, **section 1** of the bill:

- Authorizes state agencies to enter into public-private initiative agreements with nonprofit entities; and

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.

- Specifies evaluative criteria to be used by and procedures to be followed by the agencies in considering, evaluating, and accepting or rejecting unsolicited proposals for public-private initiatives.

Section 2 of the bill provides an incentive for an agency to enter into public-private initiatives by amending an existing statutory definition of "cost savings" in order to allow an agency to retain a portion of any cost savings realized from a personal services contract entered into pursuant to a public-private initiative agreement.

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

SECTION 1. Article 38 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 2

PUBLIC-PRIVATE INITIATIVES

24-38-201. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT STATE GOVERNMENT SHOULD DELIVER PUBLIC SERVICES IN THE MOST COST-EFFECTIVE AND EFFICIENT MANNER, THAT NONPROFIT ENTITIES THAT CONTRACT FOR PUBLIC SERVICES LEVERAGE THE USE OF PUBLIC FUNDS WITH PRIVATE DONATIONS, AND THAT INCREASING OPPORTUNITIES FOR NONPROFIT ENTITIES TO CONTRACT WITH STATE AGENCIES WILL FURTHER THE COST-EFFECTIVE AND EFFICIENT DELIVERY OF PUBLIC SERVICES.

24-38-202. Definitions. AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "NONPROFIT CONTRIBUTION" MEANS THE SUPPLY BY A NONPROFIT ENTITY OF RESOURCES TO ACCOMPLISH ALL OR ANY PART OF THE WORK ON A PROJECT OR THE IMPLEMENTATION OR ADMINISTRATION OF A PROGRAM.

(2) "NONPROFIT ENTITY" MEANS A CORPORATION OR ORGANIZATION AUTHORIZED TO DO BUSINESS IN THE STATE THAT IS

EXEMPT FROM TAXATION PURSUANT TO SECTION 501 (a) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (a), AS AMENDED, AND IS LISTED AS AN EXEMPT ORGANIZATION IN SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 501 (c), AS AMENDED.

(3) "PUBLIC BENEFIT" MEANS AN AGENCY GRANT OF A RIGHT OR INTEREST IN OR CONCERNING AN AGENCY PROJECT OR PROGRAM.

(4) "PUBLIC-PRIVATE INITIATIVE" MEANS A NONTRADITIONAL ARRANGEMENT BETWEEN AN AGENCY AND ONE OR MORE NONPROFIT ENTITIES THAT PROVIDES FOR:

(a) ACCEPTANCE OF A NONPROFIT CONTRIBUTION TO AN AGENCY PROJECT OR SERVICE IN EXCHANGE FOR A PUBLIC BENEFIT CONCERNING THE PROJECT OR SERVICE OTHER THAN ONLY A MONEY PAYMENT;

(b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING PROJECTS OR SERVICES; OR

(c) COOPERATION IN RESEARCHING, DEVELOPING, AND IMPLEMENTING PROJECTS OR SERVICES.

(5) "UNSOLICITED PROPOSAL" MEANS A WRITTEN PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE THAT IS SUBMITTED BY A NONPROFIT ENTITY FOR THE PURPOSE OF ENTERING INTO AN AGREEMENT WITH AN AGENCY BUT THAT IS NOT IN RESPONSE TO A FORMAL SOLICITATION OR REQUEST ISSUED BY THE AGENCY.

24-38-203. Unsolicited proposals. (1) AN AGENCY MAY CONSIDER, EVALUATE, AND ACCEPT AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL COMPLIES WITH ALL OF THE REQUIREMENTS OF THIS SECTION.

(2) AN AGENCY MAY CONSIDER AN UNSOLICITED PROPOSAL ONLY IF THE PROPOSAL:

(a) WILL ASSIST THE AGENCY IN CARRYING OUT ITS DUTIES IN A COST-EFFECTIVE AND EFFICIENT MANNER WITHOUT REPLACING EXISTING STATE EMPLOYEES;

(b) IS INDEPENDENTLY ORIGINATED AND DEVELOPED BY THE PROPOSER;

(c) IS PREPARED WITHOUT AGENCY SUPERVISION; AND

(d) INCLUDES SUFFICIENT DETAIL AND INFORMATION TO ALLOW THE AGENCY TO EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER AND TO DETERMINE IF THE PROPOSAL BENEFITS THE AGENCY.

(3) PARAGRAPHS (b) AND (c) OF SUBSECTION (2) OF THIS SECTION SHALL NOT BE DEEMED TO PROHIBIT AN AGENCY FROM ENCOURAGING THE SUBMISSION OF UNSOLICITED PROPOSALS THAT ARE WELL-DEVELOPED AND CONSISTENT WITH THE AGENCY'S GENERAL POLICY PRIORITIES BY PROVIDING WRITTEN OR ORAL INFORMATION TO ANY PERSON REGARDING THE POLICY PRIORITIES OR THE REQUIREMENTS AND PROCEDURES FOR SUBMITTING AN UNSOLICITED PROPOSAL.

(4) IF AN UNSOLICITED PROPOSAL DOES NOT MEET THE REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION, THE AGENCY SHALL RETURN THE PROPOSAL WITHOUT FURTHER ACTION. IF AN UNSOLICITED PROPOSAL MEETS ALL OF THE REQUIREMENTS OF SUBSECTION (2), THE AGENCY MAY FURTHER EVALUATE THE PROPOSAL PURSUANT TO THIS SECTION.

(5) AN AGENCY SHALL BASE ITS EVALUATION OF AN UNSOLICITED PROPOSAL ON THE FOLLOWING FACTORS:

(a) UNIQUE AND INNOVATIVE METHODS, APPROACHES, OR CONCEPTS DEMONSTRATED BY THE PROPOSAL;

(b) SCIENTIFIC, TECHNICAL, OR SOCIOECONOMIC MERITS OF THE PROPOSAL;

(c) POTENTIAL CONTRIBUTION OF THE PROPOSAL TO THE AGENCY'S MISSION;

(d) CAPABILITIES, RELATED EXPERIENCE, FACILITIES, OR TECHNIQUES OF THE PROPOSER OR UNIQUE COMBINATIONS OF THESE QUALITIES THAT ARE INTEGRAL FACTORS FOR ACHIEVING THE PROPOSAL OBJECTIVES;

(e) COST SAVINGS, EFFICIENT DELIVERY OF SERVICES, OR ENHANCED QUALITY OF SERVICE DELIVERED TO THE RECIPIENT; AND

(f) ANY OTHER FACTORS APPROPRIATE TO A PARTICULAR PROPOSAL.

(6) AN AGENCY MAY ACCEPT AN UNSOLICITED PROPOSAL ONLY IF:

(a) THE UNSOLICITED PROPOSAL RECEIVES A FAVORABLE EVALUATION; AND

(b) THE AGENCY MAKES A WRITTEN DETERMINATION BASED ON FACTS AND CIRCUMSTANCES THAT THE UNSOLICITED PROPOSAL IS AN ACCEPTABLE BASIS FOR AN AGREEMENT TO OBTAIN SERVICES EITHER WITHOUT COMPETITION OR, IF APPLICABLE, AFTER THE AGENCY TAKES THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION.

(7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (8) OF THIS SECTION, IF AN UNSOLICITED PROPOSAL REQUIRES AN AGENCY TO SPEND PUBLIC MONEYS IN AN AMOUNT THAT IS REASONABLY EXPECTED TO EXCEED FIFTY THOUSAND DOLLARS IN THE AGGREGATE FOR ANY FISCAL YEAR, THE AGENCY SHALL TAKE THE FOLLOWING ACTIONS BEFORE ACCEPTING THE UNSOLICITED PROPOSAL:

(a) PROVIDE PUBLIC NOTICE THAT THE AGENCY WILL CONSIDER COMPARABLE PROPOSALS. THE NOTICE SHALL:

(I) BE GIVEN AT LEAST FOURTEEN DAYS PRIOR TO THE DATE SET FORTH THEREIN FOR THE OPENING OF PROPOSALS, PURSUANT TO RULES.

THE NOTICE MAY INCLUDE PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION AT LEAST FOURTEEN DAYS PRIOR TO THE CONSIDERATION OF COMPARABLE PROPOSALS.

(II) BE PROVIDED TO ANY PERSON OR ENTITY THAT EXPRESSES, IN WRITING TO THE AGENCY, AN INTEREST IN A PUBLIC-PRIVATE INITIATIVE THAT IS SIMILAR IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL;

(III) OUTLINE THE GENERAL NATURE AND SCOPE OF THE UNSOLICITED PROPOSAL, INCLUDING THE WORK TO BE PERFORMED ON THE PROJECT AND THE TERMS OF ANY NONPROFIT CONTRIBUTIONS OFFERED AND PUBLIC BENEFITS REQUESTED CONCERNING THE PROJECT;

(IV) REQUEST INFORMATION TO DETERMINE IF THE PROPOSER OF A COMPARABLE PROPOSAL HAS THE NECESSARY EXPERIENCE AND QUALIFICATIONS TO PERFORM THE PUBLIC-PRIVATE INITIATIVE; AND

(V) SPECIFY THE ADDRESS TO AND THE DATE BY WHICH COMPARABLE PROPOSALS MUST BE SUBMITTED, ALLOWING A REASONABLE TIME TO PREPARE AND SUBMIT THE PROPOSALS;

(b) DETERMINE, IN ITS DISCRETION, IF ANY SUBMITTED PROPOSAL IS COMPARABLE IN NATURE AND SCOPE TO THE UNSOLICITED PROPOSAL AND WARRANTS FURTHER EVALUATION;

(c) EVALUATE EACH COMPARABLE PROPOSAL, TAKING RELEVANT FACTORS INTO CONSIDERATION; AND

(d) CONDUCT GOOD FAITH DISCUSSIONS AND, IF NECESSARY, NEGOTIATIONS CONCERNING EACH COMPARABLE PROPOSAL.

(8) THE ACTIONS REQUIRED BY SUBSECTION (7) OF THIS SECTION DO NOT APPLY TO AN UNSOLICITED RESEARCH PROPOSAL IF AN AGENCY REASONABLY DETERMINES THAT THE ACTIONS WOULD IMPROPERLY DISCLOSE EITHER THE ORIGINALITY OF THE RESEARCH OR PROPRIETARY INFORMATION ASSOCIATED WITH THE RESEARCH PROPOSAL.

(9) AN AGENCY MAY ACCEPT A COMPARABLE PROPOSAL SUBMITTED PURSUANT TO SUBSECTION (7) OF THIS SECTION IF THE AGENCY DETERMINES THAT THE COMPARABLE PROPOSAL IS THE MOST ADVANTAGEOUS TO THE STATE IN COMPARISON TO AN UNSOLICITED PROPOSAL OR OTHER SUBMITTED PROPOSALS.

(10) IF AN UNSOLICITED PROPOSAL IS ACCEPTED OR IF A COMPARABLE PROPOSAL IS ACCEPTED PURSUANT TO SUBSECTION (9) OF THIS SECTION, THE ACCEPTING AGENCY SHALL USE THE PROPOSAL AS THE BASIS FOR NEGOTIATION OF AN AGREEMENT.

(11) AN AGENCY'S PROCUREMENT OFFICER OR THE PROCUREMENT OFFICER'S DESIGNEE HAS THE AUTHORITY TO MAKE THE DETERMINATIONS AND TAKE THE ACTIONS REQUIRED BY THIS SECTION.

24-38-204. Public-private initiative agreements - cost savings. (1) AN AGENCY SHALL ENTER INTO AN AGREEMENT FOR EACH PUBLIC-PRIVATE INITIATIVE THAT IT ACCEPTS.

(2) AN AGENCY SHALL INCLUDE TERMS AND CONDITIONS IN THE AGREEMENT THAT IT DETERMINES ARE APPROPRIATE IN THE PUBLIC INTEREST.

(3) IF AN AGENCY ACHIEVES COST-SAVINGS IN A FISCAL YEAR BY ENTERING INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT, THE AGENCY SHALL BE ELIGIBLE TO RETAIN A PORTION OF ANY COST SAVINGS RESULTING FROM THE AGREEMENT AS PROVIDED IN SECTION 24-38-103.

(4) AN AGENCY THAT ENTERS INTO A PUBLIC-PRIVATE INITIATIVE AGREEMENT WITH A NONPROFIT ENTITY IS NOT A PARTNER OR A JOINT VENTURER WITH THE NONPROFIT ENTITY FOR ANY PURPOSE.

SECTION 2. 24-38-102 (2), Colorado Revised Statutes, is amended to read:

24-38-102. Definitions. As used in this article, unless the context otherwise requires:

(2) "Cost savings" means any money that an agency does not expend from its general fund appropriations for a given fiscal year that is a direct result of cost-cutting measures, ~~"Cost savings" includes~~ INCLUDING an action that would result in a base reduction due to permanent reductions in spending. ~~but~~ In no case shall "cost savings" include or be a result of a case load reduction or personal services contracts that the agency entered into under a managed competition process; EXCEPT THAT "COST SAVINGS" DOES INCLUDE SAVINGS REALIZED FROM PERSONAL SERVICES CONTRACTS ENTERED INTO PURSUANT TO A PUBLIC-PRIVATE INITIATIVE AGREEMENT BETWEEN THE AGENCY AND A NONPROFIT ENTITY IN ACCORDANCE WITH PART 2 OF THIS ARTICLE.

SECTION 3. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

RESOLUTION D

LLS NO. R10-0339.01 Ed DeCecco **SENATE Concurrent Resolution**

SENATE SPONSORSHIP

Heath, Morse

HOUSE SPONSORSHIP

Ferrandino, Court

Senate Committees	**House Committees**

SENATE CONCURRENT RESOLUTION

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AN AMENDMENT TO ARTICLE XIX OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING THE CREATION OF THE FISCAL POLICY CONSTITUTIONAL COMMISSION, AND, IN CONNECTION THEREWITH, ESTABLISHING A COMMISSION CONSISTING OF NINETEEN MEMBERS APPOINTED BY VARIOUS STATE OFFICIALS FOR THE PURPOSE OF REVIEWING THE FISCAL POLICY SET FORTH IN THE STATE CONSTITUTION AND, IF APPROPRIATE, SUBMITTING TO THE VOTERS IN 2012 ONE OR MORE MEASURES TO AMEND THE FISCAL POLICY SET FORTH IN THE CONSTITUTION; PERMITTING A MEASURE TO INCLUDE MORE THAN ONE SUBJECT; EXEMPTING A MEASURE FROM EXISTING CONSTITUTIONAL ELECTION REQUIREMENTS;

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.

REQUIRING THE GENERAL ASSEMBLY TO CONDUCT PUBLIC HEARINGS RELATED TO A MEASURE AND MAKE A RECOMMENDATION TO VOTERS ABOUT THE MEASURE; AND REQUIRING EACH MEASURE TO BE PUBLISHED PRIOR TO THE ELECTION AND INCLUDED IN THE BALLOT INFORMATION BOOKLET.

Resolution Summary

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

Long-term Fiscal Stability Commission. Currently, the state constitution may be amended by a measure referred to the voters by the general assembly or a constitutional convention or referred through the initiative process. The concurrent resolution creates an additional way to amend the constitution through the creation of a temporary fiscal policy constitutional commission (commission). The commission is created for the purpose of reviewing the fiscal policy set forth in the state constitution and, if appropriate, submitting one or more measures to amend the state constitution to the voters at the 2012 general election.

Nineteen members are appointed to the commission by representatives from the legislative, executive, and judicial branches of state government for a term that is just over one year long. A member of the general assembly or a statewide officeholder is not eligible to serve on the commission.

All commission meetings are open to the public. Members of the commission are only reimbursed for actual and necessary expenses incurred while performing duties related to the commission. The office of legislative legal services and legislative council staff shall provide staff support to assist the commission in its charge.

The commission may only submit a measure to amend the state constitution, which may include more than one subject, if:

- The commission has conducted at least one meeting in each congressional district in the state;
- The measure is approved by at least 10 members of the commission; and
- The measure relates to fiscal policy.

The commission shall submit a measure to the secretary of state in order that the title board may establish a ballot title and submission clause for each measure in a manner established by the concurrent resolution. A measure is not subject to constitutional election provisions. The commission may withdraw a measure from consideration as a ballot issue by notifying the secretary of state of the withdrawal.

The general assembly shall conduct public hearings on each measure that is to appear on the ballot and make a recommendation to the voters to either approve or reject the measure, but the general assembly may not change a measure.

The concurrent resolution also requires a measure to be printed in the 2012 blue book and 2012 session laws.

Be It Resolved by the Senate of the Sixty-seventh General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the next election at which such question may be submitted, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendment to the constitution of the state of Colorado, to wit:

Article XIX of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 3. Fiscal policy constitutional commission. (1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "COMMISSION" MEANS THE FISCAL POLICY CONSTITUTIONAL COMMISSION CREATED IN SUBSECTION (2) OF THIS SECTION.

(b) "FISCAL POLICY" MEANS GOVERNMENT EXPENDITURE AND REVENUE.

(c) "MEASURE" MEANS A MEASURE TO AMEND THIS CONSTITUTION TO BE SUBMITTED TO THE REGISTERED ELECTORS OF THE STATE FOR THEIR APPROVAL OR REJECTION AT THE 2012 GENERAL ELECTION PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(2) **Creation.** THE FISCAL POLICY CONSTITUTIONAL COMMISSION IS HEREBY CREATED FOR THE PURPOSE OF REVIEWING THE FISCAL POLICY

SET FORTH IN THIS CONSTITUTION AND, IF APPROPRIATE, SUBMITTING ONE OR MORE MEASURES TO AMEND THIS CONSTITUTION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (5) OF THIS SECTION.

(3) **Appointments.** (a) THE COMMISSION SHALL CONSIST OF NINETEEN MEMBERS APPOINTED AS FOLLOWS:

(I) SIX MEMBERS APPOINTED BY THE GOVERNOR, NO MORE THAN TWO OF WHOM SHALL BE FROM THE SAME POLITICAL PARTY;

(II) THREE MEMBERS APPOINTED BY THE PRESIDENT OF THE SENATE;

(III) THREE MEMBERS APPOINTED BY THE MINORITY LEADER OF THE SENATE;

(IV) THREE MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(V) THREE MEMBERS APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES; AND

(VI) ONE MEMBER APPOINTED BY THE CHIEF JUSTICE OF THE STATE SUPREME COURT.

(b) A MEMBER OF THE GENERAL ASSEMBLY OR A STATEWIDE OFFICEHOLDER SHALL NOT BE ELIGIBLE FOR APPOINTMENT TO THE COMMISSION.

(c) INITIAL APPOINTMENTS TO THE COMMISSION SHALL BE MADE AFTER MARCH 1, 2011, BUT NO LATER THAN MARCH 15, 2011. ANY VACANCY SHALL BE FILLED BY THE ORIGINAL APPOINTING AUTHORITY.

(d) THE TERMS OF ALL MEMBERS APPOINTED TO THE COMMISSION SHALL EXPIRE ON JUNE 1, 2012.

(4) **Administration.** (a) THE COMMISSION SHALL MEET AS OFTEN AS NECESSARY TO COMPLETE ITS CHARGE. ALL MEETINGS SHALL BE OPEN TO THE PUBLIC.

(b) THE COMMISSION SHALL ELECT A CHAIRPERSON AND VICE-CHAIRPERSON FROM ITS MEMBERSHIP AND SHALL ADOPT ANY PROCEDURES NECESSARY TO PERFORM ITS CHARGE.

(c) A MEMBER OF THE COMMISSION SHALL NOT RECEIVE COMPENSATION FOR HIS OR HER SERVICE ON THE COMMISSION BUT MAY RECEIVE REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED WHILE PERFORMING DUTIES RELATED TO THE COMMISSION.

(d) THE OFFICE OF LEGISLATIVE LEGAL SERVICES AND LEGISLATIVE COUNCIL STAFF SHALL PROVIDE STAFF SUPPORT TO ASSIST THE COMMISSION IN ITS CHARGE.

(5) **Measures to amend this constitution.** (a) THE COMMISSION SHALL HAVE THE POWER TO PROPOSE ONE OR MORE MEASURES TO AMEND THIS CONSTITUTION TO BE SUBMITTED TO THE REGISTERED ELECTORS OF THE STATE FOR THEIR APPROVAL OR REJECTION AT THE 2012 GENERAL ELECTION. NO MEASURE SHALL BE SUBMITTED UNLESS:

(I) THE COMMISSION HAS CONDUCTED AT LEAST ONE MEETING IN EACH CONGRESSIONAL DISTRICT IN THE STATE;

(II) THE MEASURE IS APPROVED BY A MAJORITY OF ALL THE MEMBERS APPOINTED TO THE COMMISSION; AND

(III) THE MEASURE RELATES TO FISCAL POLICY.

(b) NO LATER THAN MARCH 1, 2012, THE COMMISSION SHALL SUBMIT A COPY OF ANY MEASURE TO THE SECRETARY OF STATE FOR TITLE SETTING BY THE STATE TITLE BOARD. THE STATE TITLE BOARD SHALL DESIGNATE AND FIX A PROPER AND FAIR TITLE FOR EACH MEASURE IN THE MANNER SET FORTH BY LAW; EXCEPT THAT THE SUBMISSION CLAUSE SHALL BE IN THE FOLLOWING STYLE:

(I) THE SUBMISSION CLAUSE SHALL BEGIN, "SHALL THE FISCAL POLICY SET FORTH IN THE CONSTITUTION OF THE STATE OF COLORADO BE

AMENDED AS FOLLOWS:"; AND

(II) THE INTRODUCTION REQUIRED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) SHALL BE FOLLOWED BY A DESCRIPTION OF EACH CHANGE TO THIS CONSTITUTION.

(c) A MEASURE MAY CONTAIN MORE THAN ONE SUBJECT AND SHALL NOT BE SUBJECT TO THE REQUIREMENTS SET FORTH IN SECTION 20 (3) OF ARTICLE X OF THIS CONSTITUTION.

(d) LEGISLATIVE COUNCIL STAFF SHALL:

(I) PUBLISH THE TEXT AND TITLE OF A MEASURE IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 1 (7.3) OF ARTICLE V OF THIS CONSTITUTION; AND

(II) PREPARE AND MAKE AVAILABLE THE INFORMATION SET FORTH IN SECTION 1 (7.5) (a) OF ARTICLE V OF THIS CONSTITUTION FOR EACH MEASURE AS PART OF THE BALLOT INFORMATION BOOKLET.

(e) THE COMMISSION MAY WITHDRAW A MEASURE FROM CONSIDERATION AS A BALLOT ISSUE BY NOTIFYING THE SECRETARY OF STATE OF THE WITHDRAWAL NO LATER THAN MAY 31, 2012.

(f) EACH MEASURE SHALL BE PUBLISHED WITH THE LAWS OF THE SECOND REGULAR SESSION OF THE SIXTY-EIGHTH GENERAL ASSEMBLY.

(g) EACH MEASURE APPROVED BY A MAJORITY OF THOSE VOTING THEREON SHALL BECOME PART OF THIS CONSTITUTION.

(6) **Review by the general assembly.** (a) NO LATER THAN APRIL 1, 2012, THE SECRETARY OF STATE SHALL NOTIFY THE GENERAL ASSEMBLY OF EACH MEASURE FOR WHICH A BALLOT TITLE HAS BEEN SET. THE GENERAL ASSEMBLY SHALL ESTABLISH BY LAW A PROCEDURE FOR CONDUCTING ONE OR MORE PUBLIC HEARINGS FOR EACH MEASURE TO BE CONDUCTED IN EACH HOUSE OF THE GENERAL ASSEMBLY.

(b) SUBSEQUENT TO ANY PUBLIC HEARING REQUIRED PURSUANT TO

PARAGRAPH (a) OF THIS SUBSECTION (6), THE GENERAL ASSEMBLY SHALL BY A MAJORITY VOTE EXPRESS ITS VIEW ON EACH MEASURE, WHICH SHALL INCLUDE A RECOMMENDATION THAT VOTERS EITHER APPROVE OR REJECT THE MEASURE. THE GENERAL ASSEMBLY SHALL NOT HAVE THE POWER TO CHANGE A MEASURE, AND A MEASURE MAY BE SUBMITTED TO THE REGISTERED ELECTORS OF THE STATE REGARDLESS OF THE GENERAL ASSEMBLY'S RECOMMENDATION.

(7) **Repeal.** THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2014.

SECTION 2. Each elector voting at said election and desirous of voting for or against said amendment shall cast a vote as provided by law either "Yes" or "No" on the proposition: "SHALL THERE BE AN AMENDMENT TO ARTICLE XIX OF THE CONSTITUTION OF THE STATE OF COLORADO, CONCERNING THE CREATION OF THE FISCAL POLICY CONSTITUTIONAL COMMISSION, AND, IN CONNECTION THEREWITH, ESTABLISHING A COMMISSION CONSISTING OF NINETEEN MEMBERS APPOINTED BY VARIOUS STATE OFFICIALS FOR THE PURPOSE OF REVIEWING THE FISCAL POLICY SET FORTH IN THE STATE CONSTITUTION AND, IF APPROPRIATE, SUBMITTING TO THE VOTERS IN 2012 ONE OR MORE MEASURES TO AMEND THE FISCAL POLICY SET FORTH IN THE CONSTITUTION; PERMITTING A MEASURE TO INCLUDE MORE THAN ONE SUBJECT; EXEMPTING A MEASURE FROM EXISTING CONSTITUTIONAL ELECTION REQUIREMENTS; REQUIRING THE GENERAL ASSEMBLY TO CONDUCT PUBLIC HEARINGS RELATED TO A MEASURE AND MAKE A RECOMMENDATION TO VOTERS ABOUT THE MEASURE; AND REQUIRING EACH MEASURE TO BE PUBLISHED PRIOR TO THE ELECTION AND INCLUDED IN THE BALLOT INFORMATION BOOKLET?"

SECTION 3. The votes cast for the adoption or rejection of said amendment shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress, and if a majority of the electors voting on the question shall have voted "Yes", the said amendment shall become a part of the state constitution.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

RESOLUTION E

LLS NO. R10-0338.01 Esther van Mourik **SENATE Joint Resolution**

SENATE SPONSORSHIP

Heath, Brophy, Morse

HOUSE SPONSORSHIP

Court, Ferrandino, Gerou

Senate Committees **House Committees**

SENATE JOINT RESOLUTION

CONCERNING A REQUEST FOR A COMPREHENSIVE TAX STUDY.

WHEREAS, The General Assembly is constitutionally obligated to provide by law for an annual tax sufficient, with other resources, to defray the estimated expenses of state government and is authorized to vest counties, cities, towns, districts, or other local government entities with the power to assess and collect taxes; and

WHEREAS, The state constitution requires that the General Assembly assure just and equalized valuations for assessment of nonexempt real and personal property; and

WHEREAS, The tax policy of the state has not been comprehensively studied since 1958; and

WHEREAS, A comprehensive review of the state's revenue system will aid the General Assembly in carrying out its obligation to assure the equitable distribution of state and local tax burdens among Colorado taxpayers; and

WHEREAS, In this time of significant budget cuts, revenue shortfalls, and economic uncertainty, it is impossible for the General Assembly to fund a comprehensive tax study from its budget; now, therefore,

Be It Resolved by the Senate of the Sixty-seventh General Assembly of the State of Colorado, the House of Representatives concurring herein:

(1) That the General Assembly requests a comprehensive tax study be performed by the University of Denver and that such study be funded by the private sector.

(2) That the comprehensive tax study consider, but not be limited to, the following:

(a) A nonpartisan review of tax policy of the state and local governments in Colorado;

(b) Whether changes in tax policy or tax laws would aid in ensuring the equitable distribution of state and local tax burdens among Colorado taxpayers;

(c) The relationship of state and local taxes to the long-term economic growth and prosperity of the state, its communities, and its citizens;

(d) The burdens on individuals and businesses resulting from taxes imposed by the state and by local governments and how these burdens have changed over time;

(e) The changing burdens on the state and local governments in financing the provision of public services to the residents of Colorado;

(f) Recommendations concerning the optimum combination of broad-based state and other state and local taxes to adequately finance future needs for state and local government services and equitably distribute the burdens on taxpayers;

(g) Future trends that might create financial impacts on the state and local governments within the next ten years and evaluating the ability of the tax base of the state and local governments to respond to those trends;

(h) The rates, bases, credits, and exemptions of each state and local tax; and

(i) The potential revenue and expenditure limitations for state and local governments.

(3) That the General Assembly requests a report be generated and provided to the First Regular Session of the Sixty-eighth General Assembly in January 2011.

Attachment A

Long Term Fiscal Stability Commission
Minority Report
November 2009

Contributors:

Senator Greg Brophy
Representative Cheri Gerou
Sean Conway
Amy Oliver Cooke
Jonathan Coors
Marty Neilson

"And this isn't some temporary hiccup. We're living in a new economic reality, where flat is the new up, or at least the new normal. This is a long-lasting correction, a massive shift."

-Gov. Bill Ritter, in a prepared statement about the current economic climate, Oct. 22, 2009

Introduction

Despite coming together on a few limited proposals, the minority felt compelled to write a report because of the disappointing overall result of the commission's work.

It is the view of the minority that the commission failed to live up to its charge by not developing a plan for long-term fiscal stability. Its approach indulged those who simply want to expand government spending, and the main proposal – to empower a non-elected and unaccountable commission to circumvent the constitution - in the end was passed on a party-line vote. The commission should have developed a long-term plan for the benefit of Colorado's people. Instead, it focused on expanding government in an effort that is likely to be continued by the outside commission it seeks to create.

While Republican legislators on the committee showed good faith in working with the Democrats on their proposals, not a single Democrat vote was cast in favor of a Republican-sponsored bill, despite broad support for the measures by citizen commissioners. This was particularly concerning in regard to the creation of a substantive Rainy Day Fund.

Background

For most of the last two years, Colorado, along with the rest of the country, found itself in the grips of the nation's worst recession since the Great Depression. With declining revenues and increasing spending obligations, especially for K-12 education and Medicaid, Colorado lawmakers raided cash funds and relied on the federal government to backfill other programs. Unfortunately, this situation is likely to repeat itself.

In an Issue Brief titled *"Colorado's State Budget Tsunami,"* the University of Denver's Center For Colorado's Economic Future explained:

"*The legislature's difficulties in balancing the books for fiscal years 2009 and 2010 will likely be repeated in the following year as law-makers are compelled to find additional money for public schools and Medicaid, and they struggle to replace one-time money used to prop up current spending. Other General Fund programs will suffer as a result.*"

As a response to the current and future economic climate, the Colorado state legislature established a commission to study the long-term stability of the state. SJR 09-044 created the Long-Term Fiscal Stability Commission. The commission was charged with studying the "state's fiscal environment and developing a strategic plan for future fiscal stability." The commission consists of 16 members appointed by legislative leadership.

Legislative:

- Senator Rollie Health (D-Boulder), Chairman
- Representative Mark Ferrandino (D-Denver), Vice Chairman
- Senator Greg Brophy (R-Wray)
- Senator John Morse (D-Colorado Springs)
- Representative Lois Court (D-Denver)
- Representative Cheri Gerou (R-Evergreen)

Non-Legislative:

- Denver City Councilwoman Carol Boigon
- Weld County Commissioner Sean Conway
- Director, Colorado Transparency Project, Amy Oliver Cooke
- Director, CoorsTek, Jonathan Coors
- President, Colorado Non-profit Association, Renny Fagan
- Farmer and Rancher Tim Hume
- Former Vice Provost and Dean, CSU, Kirvin Knox
- CEO, Kaiser Permanente, Donna Lynne
- President, Colorado Union of Taxpayers, Marty Neilson
- COO, Colorado Housing and Finance Authority, Chris White

General Observations

The commission met 11 full days from July to November. Early in the process, it became clear that the commission had a predetermined outcome to grow government spending. Rather than examining Colorado's long term fiscal stability and conflicting constitutional spending mandates, the commission focused on the current economic situation. Commissioners spent three full days listening to the department directors for the "big six" budget items – K-12 Education, Health Care Policy and Financing (HCPF), Corrections, Human Services, Higher Education, and Judiciary – that make up the state's general fund, 39.5 percent of the total budget. Too much time was spent listening to those who spend money, and precious little time spent listening to those whose money government spends. Citizens and taxpayers were relegated to one afternoon of public comments. The result was a Christmas wish list for government spending.

On October 30, commissioners received a chart summarizing expanded funding desires of the "big six," plus capital construction. The total for "ideal" funding is an additional $9.271 billion, or roughly an additional $1,854 per year for every man, woman and child in Colorado, $7,416 for a family of four.

The breakdown of additional funding:

- Transportation: $1.527 billion
- Capital Construction: $353 million
- K-12 Education: $2.815 billion
- Judiciary: $84 million
- Higher Education: $981 million
- Corrections: $198 million
- Human Services: $813 million
- Health Care: $2.5 billion (includes some federal dollars)

As part of the strategy to develop a consensus for the predetermined outcome to increase government, the majority focused on the overreaching discussion question: "What kind of Colorado do we want?" The minority strongly disagreed with the question and instead, tried to move the conversation toward a discussion on the core functions of Colorado state government.

Minority Interpretation of Core Functions:

- Public safety – law enforcement, civil and criminal courts, corrections and public health
- Infrastructure – transportation, water, sewer
- Education
- Social safety net, including health care, for those truly in need

Majority Interpretation of Core Functions:

- Public Safety
- P-20 Education
- Health Care
- Infrastructure
- Economic Development
- State Parks

The commission was also authorized to approve five bills for the 2010 legislative session. The commission spent most of October 15 developing ideas, which resulted in nine suggested pieces of legislation, of which, seven bills were drafted.

While the proposal is not included here, it is important to note that the proposal for the elimination of the Commission of Higher Education was agreed upon by the whole group. However, without notice or consensus, the majority decided it was not to be forwarded for legislative drafting.

Conclusion

As a result of the approach taken by the commission, which appeared to purposefully sideline conservative perspectives, no consensus was reached on the main proposal approved by the Commission, or on the proposals presented by conservative members on the commission.

The commission agreed on policy changes for higher education, on the need for a rainy day fund and a study of Colorado's tax structure, as well as the benefit of public/private partnerships. However, a substantive group of commissioners strongly opposed empowering a non-elected and unaccountable outside commission to circumvent the referendum and initiative process to alter our state constitution.

Again, we believe that while the bi-partisan proposals moved forward from the commission are of value, the overall work of the commission does not fulfill the duties with which it was charged. The commission failed to develop a plan for long-term fiscal stability.

It missed a golden opportunity to build consensus behind a plan to secure fiscal stability for future generations.