



STATE OF COLORADO

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Memorandum

TO: Members of the Legislative Audit Committee

FROM: Joanne Hill, CPA
State Auditor

DATE: August 12, 2004

RE: University of Colorado Enterprise Designation

The General Assembly enacted a new statute (Section 23-5-101.7, C.R.S.) in 2004 enabling higher education governing boards to designate their respective institutions as a TABOR-exempt enterprise. Once an institution is designated as an enterprise, the Office of the State Auditor and the Legislative Audit Committee are required to determine whether the designation conforms to the provisions of the statute. The Board of Regents approved resolutions on June 2 and July 8, 2004 designating the University of Colorado as an enterprise for Fiscal Year 2005 for purposes of Article X, Section 20 of the Colorado Constitution (Taxpayer's Bill of Rights or TABOR).

My Office has completed a review of the enterprise designation. The following discusses the results of the review and my recommendation for action to be taken by the Legislative Audit Committee.

Background

The General Assembly passed Senate Bill 04-189 during the 2004 Legislative Session. Among other things, the Bill:

- C Changes the process for funding postsecondary education. The College Opportunity Fund was established to provide stipends to undergraduate students who attend a state or private participating institution of higher education.
- C Makes the Colorado Commission on Higher Education responsible for acquiring specified educational services from state institutions of higher education. On behalf of the Commission, the Department of Higher Education was authorized to enter into fee-for-service contracts with higher education governing boards to purchase such services.
- C Enables governing boards to designate higher education institutions as a TABOR-exempt enterprise and establishes the requirements and process for enterprise designation.

The sections of Senate Bill 04-189 related to the College Opportunity Fund stipends and the Commission on Higher Education fee-for-service contracts take effect on July 1, 2005. The section of the Bill relating to enterprise designations became effective July 1, 2004.

Results of Review

To qualify as an enterprise, a higher education institution needs to be a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of its annual revenue in grants from all Colorado state and local governments combined. We reviewed information submitted to us by the University of Colorado concerning its enterprise status in the form prescribed by the Legislative Audit Committee. We found the University meets the requirements of an enterprise for the following reasons.

Government-Owned Business

Neither the Colorado Constitution nor statutes specify the characteristics of a government-owned business. However, a formal opinion issued by the Attorney General's Office (No. 97-1, March 11, 1997) stated that:

To satisfy the definition of an "enterprise" under TABOR, the enterprise must be an independent, self-supporting government-owned business that receives income, fees, and revenue in return for the provision of goods or services. The very concept of an enterprise under TABOR envisions an entity that is owned by a government institution, but is financial distinct from it. *Nicoll v. E-470 Public Highway Authority*, 896 P.2d 859, 868 (Colo. 1995).

This is consistent with the definition of a government-owned business in the *Higher Education Enterprise Designations Performance Audit* of August 1994 issued by the Office of the State Auditor. The audit stated that:

A government-owned business should be self-sustaining and economically viable based upon revenue received in market exchanges for a product or service provided to customers external to the organization

Therefore, the primary characteristics of a business are to provide goods and services for a fee and be self-supporting. The enterprise should engage in arms-length, market exchanges and provide goods and services at a market rate sufficient for the independent operation of the enterprise. Further, it has generally been held that to qualify as an enterprise the entity should engage in the kind of activity that is commonly carried on for profit outside of government.

We believe the University of Colorado possesses the characteristics of a government-owned business. The Colorado Constitution and state statutes establish the University as an institution of the State of Colorado and the Board of Regents as its governing authority. The University receives fees and revenue from market exchanges for goods and services provided to external customers. It engages in activities that exist in both profit and nonprofit forms outside of state government. It also competes with similar business types outside of state government. In addition, Senate Bill 04-189 declares that the provision of higher education services is a business.

Authority to Issue Revenue Bonds

The University has the ability to issue revenue bonds. Section 23-5-102 (2), C.R.S., as amended by Senate Bill 04-189 and Senate Bill 04-252, authorizes the governing board of any institution of higher education to issue revenue bonds on behalf of the institution. The Board of Regents has

issued a number of revenue bonds on behalf of the University of Colorado. As of June 30, 2004, the principal balance of all outstanding revenue bonds totaled \$358 million.

Under 10 Percent of Governmental Support Received

TABOR limits the amount of governmental support an institution may receive to less than 10 percent of its annual revenue in grants from state and local governments. TABOR does not define what is meant by “grants.” Enabling legislation (Section 23-5-101.5 (1.5) (b), C.R.S.) defines a grant to be any direct cash subsidy or other direct contribution of money from the State or any local government in Colorado which is not required to be repaid.

The University does not receive any cash subsidy or direct cash contribution from local governments. Historically, it has received funds from the State of Colorado through General Fund appropriations for operating purposes and through Capital Construction Fund appropriations for capital projects and controlled maintenance. Because of state budgetary constraints, the University’s general fund appropriation was significantly reduced in Fiscal Years 2003 and 2004. The general fund appropriation decreased approximately 29 percent from \$217 million in Fiscal Year 2002 to \$155 million in Fiscal Year 2004. Reductions in capital appropriations also occurred during this time.

According to University personnel, the only capital appropriations the University expects to receive during Fiscal Years 2005 through 2008 is for rental payments for the Fitzsimons lease-purchase agreements authorized by House Bill 03-1256. In 2003, the General Assembly authorized the State of Colorado, acting by and through the Regents of the University of Colorado, to enter into lease-purchase agreements to finance construction of approximately \$203 million of facilities at the Fitzsimons Campus. The lease-purchase agreements have not been executed because of a lawsuit filed concerning the constitutionality of House Bill 03-1256. The University believes that the State will prevail, whereupon the University will enter into the lease-purchase agreements.

Further, the University believes that a direct contribution of money from the State to the University will occur when the rental payments are funded and appropriated. Therefore, the University will consider the rental payments to be state support for TABOR purposes. We requested an opinion from the Office of Legislative Legal Services concerning whether or not the annual Fitzsimons rental payments constitute state support to the University. In a legal memorandum dated August 4, 2004 (copy attached), the Office of Legislative Legal Services concluded that under TABOR the rental payments made by the State on behalf of the University constitute a direct cash subsidy to the University and should be counted as a state grant for calculating the amount of governmental support received.

The following chart shows the calculation of state support for Fiscal Years 2003 through 2007 excluding the provisions of Senate Bill 04-189 related to College Opportunity Fund stipends and fee-for-service contracts through the Colorado Commission on Higher Education.

**Calculation of State Support For Fiscal Years 2003 Through 2007
Excluding the Effects of Senate Bill 04-189
(In Millions)**

	FY 2003 Actual	FY 2004 Unaudited	FY 2005 Budgeted	FY 2006 Estimated	FY 2007 Estimated
Total Operating Revenues	\$1,616	\$1,817	\$1,777	\$1,870	\$1,905
State Support:					
General Fund Appropriation	194	155	151	151	151
Capital Appropriation	10	3	0	0	0
Fitzsimons Rental	<u>0</u>	<u>0</u>	<u>2</u>	<u>7</u>	<u>15</u>
Total State Support	\$ 204	\$ 158	\$ 153	\$ 158	\$ 166
Percent of State Support	12.6%	8.7%	8.6%	8.4%	8.7%

Beginning with the state fiscal year commencing on July 1, 2005, Senate Bill 04-189 changes the process of funding higher education institutions. Instead of appropriating general fund monies directly to higher education governing boards for tuition and other educational services, stipends for tuition will be provided to undergraduate students through the College Opportunity Fund and the Commission on Higher Education will purchase educational services from governing boards through fee-for-service contracts. Because of these changes, Senate Bill 04-189 provides that stipend and fee-for-service contract monies not be considered a grant to higher education institutions for purposes of TABOR support. The following chart shows the calculation of state support for Fiscal Year 2006 and 2007 with these two provisions of Senate Bill 04-189 included.

**Calculation of State Support For Fiscal Years 2006 and 2007
Including the Effects of Senate Bill 04-189
(In Millions)**

	FY 2006 Estimated	FY 2007 Estimated
Total Operating Revenues	\$1,870	\$1,905
State Support:		
General Fund Appropriation	0	0
Capital Appropriation	0	0
Fitzsimons Rental Payments	<u>7</u>	<u>15</u>
Total State Support	\$ 7	\$ 15
Percent of State Support	0.4%	0.8%

As shown in the above two charts, the University will receive under 10 percent of its annual revenues from state and local governments during Fiscal Year 2005 and the two subsequent Fiscal Years. It will do so with or without the college stipend and fee-for service provisions of Senate Bill 04-189.

The Commission on Higher Education is currently overseeing development of the processes and funding mechanisms to be used for implementing College Opportunity Fund stipends and fee-for-service contracts for Fiscal Year 2006. In addition, the Commission is studying whether changes should be made in the management and funding of future state-funded capital construction and controlled maintenance projects for higher education institutions. As a result, there is not sufficient information available at this time for us to evaluate these processes and funding mechanisms. The Commission projects that the development and study efforts will be completed by November 2004.

Conclusion

On the basis of information provided to us, the University of Colorado meets the constitutional and statutory requirements of a TABOR-exempt enterprise. It should be noted that the final determination of enterprise status is made at the end of each fiscal year. This is necessary to ensure that the actual support received from state and local governments is within the TABOR limitation. The determination of final TABOR status will be reviewed as part of the annual financial audit of the University and as part of our Office's annual statewide audit of TABOR revenue.

Recommendation

I recommend that the Legislative Audit Committee approve the designation of the University of Colorado as a TABOR-exempt enterprise subject to determination of final enterprise status at the end of each fiscal year.

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Office of Legislative Legal Services Opinion: Treatment of lease-purchase agreements for purposes of calculating revenue under section 23-5-101.7, C.R.S., August 4, 2004

Report Control Number 1679

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MEMORANDUM

TO: Sally Symanski, Office of the State Auditor

FROM: Office of Legislative Legal Services

DATE: August 4, 2004

SUBJECT: Treatment of lease-purchase agreements for purposes of calculating revenue under section 23-5-101.7, C.R.S.¹

ISSUE:

Are payments made by the state on behalf of the University of Colorado under certain lease-purchase agreements or the value of the asset acquired under those lease-purchase agreements a "grant" for purposes of determining whether the University is eligible for designation as an enterprise under section 23-5-101.7, C.R.S.²

CONCLUSION:

The amount of the annual payments made under a lease-purchase agreement should be counted as a grant for purposes of section 23-5-101.7, C.R.S., and not the value of the asset acquired. In order to be designated as an enterprise for the purposes of section 20 of article X of the state constitution, section 23-5-101.7, C.R.S., requires that an institution of higher education or group of institutions of higher education receive less than ten

¹ This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

² This legal memorandum addresses how lease-purchase payments made by the state shall be counted for purposes of calculating annual revenue of an entity designated as an enterprise pursuant to section 23-5-101.7, C.R.S., and does not address how the capital asset purchased through the lease-purchase payments should be treated for purposes of generally accepted accounting principles.

percent of its annual revenue in grants from state and local governments in Colorado combined and that the governing board of said institution retains authority to issue revenue bonds on behalf of such institution or group of institutions.

In sections 24-77-102, C.R.S., concerning state fiscal policies relating to section 20 of article X of the state constitution, and 23-5-101.5, C.R.S., relating to enterprise status in the higher education venue, the General Assembly has defined "grant" to mean "any direct cash subsidy or other direct contribution of money from the state or any local government in Colorado which is not required to be repaid." A lease payment made by the state on behalf of the University of Colorado ("CU") under a lease-purchase agreement is a direct cash subsidy to CU and should be counted as a grant for purposes of calculating whether the institution receives less than ten percent of its annual revenue in grants from state and local governments in Colorado combined. However, the value of a capital asset that CU may hold title to or have a legal interest in, being an indirect benefit rather than a direct cash subsidy or direct contribution of money, would not be counted as a grant for purposes of calculating the designated enterprise's annual revenue for purposes of section 23-5-101.7, C.R.S.

BACKGROUND:

Enterprise status: Article X, section 20 of the state constitution (TABOR) applies to "districts", which are defined to mean "the state or any local government, excluding enterprises."³ Since enterprises are specifically excluded from this definition, qualified enterprises are not subject to the provisions of TABOR. An "enterprise" is defined to mean "a government-owned business authorized to issue its own revenue bonds and receiving under 10% of its annual revenue in grants from all Colorado state and local governments combined."⁴

Section 23-5-101.7, C.R.S., was enacted⁵ to allow governing boards of institutions of higher education to designate as enterprises an institution of higher education ("institution") or group of institutions that meet the requirements of section 23-5-101.7, C.R.S.

³ Colo. Const. Art. X, Sec. 20 (2)(d).

⁴ Id.

⁵ Senate Bill 04-189.

An institution or group of institutions may be designated as an enterprise if:

- The governing board of said institution or group of institutions retains authority to issue revenue bonds on behalf of the institution or group of institutions; and
- Such institution or group of institutions receives less than ten percent of its total annual revenues in grants from all Colorado state and local governments combined.⁶

Section 23-5-101.7 (4), C.R.S., establishes a process for a governing board to designate an institution or a group of institutions as an enterprise. The statute also provides for review of those designations by the State Auditor's office and for the Legislative Audit Committee to review and determine whether the designations conform with the provisions of section 23-5-101.7, C.R.S.⁷

During the 2003 Regular Session, in House Bill 03-1256, the General Assembly specifically authorized the Board of Regents of CU on behalf of the state of Colorado to enter into lease-purchase agreements for the acquisition of certain academic buildings at the University of Colorado Health Sciences Center (UCHSC). The General Assembly appropriated \$1.9 million for the 2004-05 state fiscal year to make payments under such lease-purchase agreements. The construction costs associated with the academic buildings expended during the 2004-05 state fiscal year are anticipated to be much higher than the amount of the lease-purchase payments. If the construction costs, as the value of the asset acquired, are counted as a grant to CU, CU may receive more than ten percent of its revenue from state and local grants.

⁶ Section 23-5-101.7 (2), C.R.S.

⁷ Section 23-5-101.7 (4), C.R.S., provides as follows:

23-5-101.7. Enterprise status of institutions of higher education. (4) (b) All resolutions adopted pursuant to paragraph (a) of this subsection (4) shall be submitted by the adopting governing board to the office of the state auditor in the form and manner prescribed by the legislative audit committee. The designations shall be reviewed by the office of the state auditor to determine whether the designations are within the authority of the adopting governing board pursuant to the provisions of this section. The legislative audit committee shall also review the designations to determine whether the designations conform with the provisions of this section. The official certificate of the state auditor as to the fact of submission or the date of submission of a designation as shown by the records of the office of the state auditor, as well as to the fact of nonsubmission as shown by the nonexistence of such records, shall be received and held in all civil cases as competent evidence of the facts contained therein. A designation adopted by a governing board of an institution or group of institutions of higher education without being submitted within twenty days after adoption to the office of the state auditor for review by the office and by the legislative audit committee shall be void.

Pursuant to section 23-5-101.7, C.R.S., the Board of Regents for CU submitted to the Office of the State Auditor a resolution and supporting documentation for CU to be designated as an enterprise. CU has informed the State Auditor that it intends to count the payments made by the state on the lease-purchase agreements as part of its grants from the state for purposes of establishing that CU receives less than ten percent of its annual revenue from state and local governments in Colorado combined.⁸

ANALYSIS:

Pursuant to TABOR, an enterprise is a government-owned business authorized to issue revenue bonds and receiving under ten percent of its annual revenue from state or local "grants".⁹ Since the focus of this opinion is how the benefit received under a lease-purchase agreement should be considered for purposes of calculating the institution's annual revenue for purposes of being designated as an enterprise, the main focus of this analysis will be what is considered a "grant" for purposes of article X, section 20 (2)(d), of the state constitution.

General Assembly's authority to implement TABOR: The fact that TABOR is a "self-executing" constitutional amendment does not prohibit the General Assembly from enacting legislation to implement this constitutional provision. However, legislation supplementing a "self-executing" constitutional amendment must make it more effective, may not exceed any constitutional limitation, and must further the purpose of the constitutional right or facilitate its operation. *Yenter v. Baker*, 126 Colo. 232, 248 P.2d 311 (1952); *Colorado Project - Common Cause v. Anderson*, 178 Colo. 1, 495 P.2d 220 (1972); *Urevich v. Woodward*, 667 P.2d 760 (Colo. 1983). In addition to using its legislative power to define and interpret a constitutional provision, the General Assembly may use its legislative power to resolve ambiguities in TABOR as well as to "fill in the gap" when TABOR does not address an issue. "In enacting legislation, the General Assembly is authorized to resolve ambiguities in constitutional amendments in a manner consistent with the terms and underlying purposes of the constitutional provisions." *In re Interrogatories Relating To the Great Outdoors Colorado Trust Fund*, 913

⁸ CU originally informed the State Auditor that it did not believe that any portion of the payments made by the state on the lease-purchase agreements should count against the 10% limit. Later, CU indicated that it estimated that the fair market rental value of the academic buildings would be \$5 million per year and that CU would count \$5 million per year against the 10% limit. Subsequently, CU agreed to recognize the amount of the lease payments made by the state and drop the idea of including only the \$5 million fair market rental value.

⁹ Colo. Const. Art. X, Sec. 20 (2)(d).

P.2d 533, 539 (Colo. 1996). See also *Submission of Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993); *Zaner v. Brighton*, 917 P.2d 280 (Colo. 1996).

Article 77 of title 24, C.R.S., is an example of a legislative enactment that implements, interprets, resolves ambiguities in, or fills in gaps in TABOR. Article 77 of title 24, C.R.S., establishes the framework for setting state policy as to the level of activity and the funding of state programs while complying with the voters' intent to restrict the growth of government. The enactment of this statute is direct evidence of the authority of the General Assembly in this regard. This authority was expressly recognized by the Colorado Supreme Court in *In re Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993) and *Zaner v. Brighton*, 917 P.2d 280 (Colo. 1996).

Accordingly, in interpreting TABOR, the General Assembly has taken into consideration and applied traditional judicial rules of constitutional and statutory construction as well as judicial interpretations of the provisions of TABOR. In enacting TABOR implementing legislation, the General Assembly has maintained a thoughtful and prudent exercise of the legislative power to define and interpret provisions of the state constitution, including the resolution of ambiguities and unaddressed issues.¹⁰

Applying the definition of "grant": The question then becomes whether the lease-purchase payments at issue are a "grant" for purposes of determining whether CU is eligible for designation as an enterprise or whether the value of the asset acquired by CU is a "grant". In furtherance of its ability to enact TABOR implementing legislation, the General Assembly has defined a "grant" generally in section 24-77-102 (7), C.R.S., and specifically for purposes of enterprises in the higher education venue in section 23-5-101.5 (2) (b) (I), C.R.S., as "any direct cash subsidy or other direct contribution of moneys from the state or local government which is not required to be repaid."

With respect to the interpretation of constitutional and statutory provisions, the "plain meaning rule" is usually the first rule of statutory construction to be applied. The rule is generally stated as follows: "Where the language used is plain, its meaning clear, and no absurdity is involved,

¹⁰ The General Assembly's restraint and prudence in enacting legislation addressing TABOR is evidenced by the fact that, in three instances, the General Assembly submitted legislation implementing TABOR to the Supreme Court on interrogatories: Senate Bill 93-74 regarding "State Fiscal Policies Relating to Section 20 of Article X of the State Constitution" (see: *In re Interrogatories on Senate Bill 93-74*, 852 P.2d 1 (Colo. 1993)); Senate Bill 93-98 regarding odd-year elections; and House Bill 99-1325 regarding "Transportation Revenue Anticipation Notes" (see: *Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999)).

Constitution, statute, or contract, must be declared and enforced as written." *People ex rel. Park Reservoir Co. v. Hinderlider*, 98 Colo. 505, 57 P.2d 894 (1937).¹¹ Words and phrases should be given effect according to their plain and ordinary meaning unless the result is absurd. *Colorado Dep't of Social Servs. v. Board of City Comm'rs*, 697 P.2d 18 (Colo. 1985); *Snyder Oil Co. v. Embree*, 862 P.2d 259 (Colo. 1993).

Here, the plain meaning of a "direct cash subsidy" or "direct contribution of moneys" must be examined to determine whether the lease-purchase payments are a "grant". *Webster's Tenth Collegiate Dictionary* (2001) defines "subsidy" in part as "a grant or gift of money". *Black's Law Dictionary*, 5th Edition, defines "subsidy" as "A grant of money made by government in aid of the promoters of any enterprise, work, or improvement in which the government desires to participate, or which is considered a proper subject for government aid, because such purpose is likely to be of benefit to the public." Conversely, a "contribution" is defined as "something that is contributed: a sum or thing voluntarily contributed". "Contribute" is defined as "to give or grant in common with others".¹²

House Bill 03-1256 authorized the state of Colorado, acting by and through the Board of Regents of the CU, to enter into lease-purchase agreements to finance the construction of facilities at the former Fitzsimons army base in order to develop the UCHSC on the Fitzsimons site. The bill requires that these authorized lease-purchase agreements provide that all of the obligations of the state under such agreements shall be subject to the action of the General Assembly in annually making moneys available for all payments

¹¹ The following explanation of this rule is set forth in *Colorado State Civil Service Employees Association v. Love*, 167 Colo. 436, 448 P.2d 624 (1968):

"Whether we are considering an agreement between parties, a statute or a constitution, with a view to its interpretation, the thing which we are to seek is the thought which it expresses. To ascertain this the first resort in all cases is to the natural signification of the words employed in the order of grammatical arrangement in which the framers of the instrument have placed them. If, thus regarded, the words embody a definite meaning which involves no absurdity and no contradiction between different parts of the same writing, then that meaning, apparent on the face of the instrument, is the one which alone we are at liberty to say was intended to be conveyed. In such a case there is no room for construction. That which the words declare is the meaning of the instrument, and neither courts nor legislatures have a right to add to or take away from that meaning." (Emphasis supplied by the court.)

¹² *Webster's Third International Dictionary* (1986).

under such agreements.¹³ If the General Assembly makes moneys available for payments under the lease-purchase agreement, the purpose would be to construct facilities to develop the UCHSC, which is a part of CU. Under such circumstances, the state is effectively making the lease-purchase payments with state funds on behalf of CU.

To the extent that the General Assembly makes state moneys available for the payments under a lease-purchase agreement, these moneys would be a "direct cash subsidy" since the payments are made in aid of CU and the state is a willing participant in the construction of improvements that one may reasonably conclude will be of benefit to the public.¹⁴ Further, the state is not requiring CU to repay the amount of the lease-purchase payments, in conformance with the definition of a "grant". Accordingly, the lease-purchase payments constitute a "grant" within the plain meaning of that term for purposes of calculating CU's annual revenue.

Conversely, any benefit that an entity may receive from the state that is not a "direct cash subsidy or direct contribution of moneys" would not be considered a grant for purposes of section 23-5-101.7, C.R.S. The General Assembly has defined "grant" to not include:

"any indirect benefit conferred upon an auxiliary facility, or group of auxiliary facilities or an institution or group of institutions from the state or any local government in Colorado, *including any interest in or use of existing facilities owned, funded, or financed by the governing board of an institution, the state, or any local government in Colorado;*"¹⁵ [Emphasis added]

The question is whether CU has any interest in a facility that is funded or financed by the state through lease-payments made pursuant to a lease-purchase agreement.

First, we look at the phrase "any interest". *Webster's Tenth Collegiate Dictionary* (2001) defines "any" in several ways, including "one or more --

¹³ Subsection (2)(b) of section 3 of chapter 190, Session Laws of Colorado 2003.

¹⁴ It is less clear whether the lease-purchase payments are a "direct contribution of moneys" within the plain meaning of "contribution" since that term seems to contemplate the donor or contributor being one of a group of contributors. That does not appear to be the situation with the lease-purchase payments made by the state on behalf of CU that are at issue here.

¹⁵ Section 23-5-101.5 (2)(b)(II), C.R.S.

used to indicate an undetermined number or amount". The term "interest" is defined in *Webster's* as a "right, title, or legal share in something". Therefore, "any interest" refers to an undetermined legal share in something. House Bill 03-1256 specifically authorizes the state or the Board of Regents of CU to receive title to all real property that is the subject of the lease-purchase agreement and requires that any title to such property received by the state be held for the benefit and use of CU.¹⁶

Clearly, CU would have an interest in a state-financed facility that CU holds title to or has a legal share in. Under such circumstances, the facility would be considered an indirect benefit to CU and, therefore, would not be counted as a grant for purposes of calculating the designated enterprise's annual revenue under of section 23-5-101.7, C.R.S.

¹⁶ Subsection (2)(c) of section 3 of chapter 190, Session Laws of Colorado 2003.

Report Control Number 1679