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Legislative Council Staff
3/21/19 4:55pm

Be it Enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 86.1 to title 22 as follows:

ARTICLE 86.1
COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM

22-86.1-100. Legislative declaration. THE VOTERS OF THE STATE OF COLORADO FIND AND DECLARE THAT:

(1) EXPANDED LEARNING OPPORTUNITIES ARE CRITICAL FOR ALL COLORADO CHILDREN AND YOUTH. THESE OPPORTUNITIES, DURING PERIODS AND TIMEFRAMES OUTSIDE OF THEIR REGULAR SCHOOL SCHEDULES, PROVIDE ESSENTIAL ACADEMIC AND LIFE SKILLS FOR CHILDREN AND YOUTH TO THRIVE IN SCHOOL AND LIFE.

(2) PROVIDING CONSISTENT AND RELIABLE ACCESS TO OUT-OF-SCHOOL LEARNING EXPERIENCES TO ALL OF COLORADO'S CHILDREN WILL ALLOW THEM TO RECEIVE TUTORING AND SUPPLEMENTAL ACADEMIC INSTRUCTION, RECEIVE TARGETED SUPPORT FOR SPECIAL NEEDS AND LEARNING DISABILITIES, ATTEND IN-DEPTH YOUTH PROGRAMS WHERE THEY LEARN NEW SKILLS AND PARTICIPATE IN OUTDOOR ACTIVITIES, BE EXPOSED TO NEW AND CHALLENGING REAL WORLD EXPERIENCES THAT BROADEN THEIR HORIZON AND BUILD ESSENTIAL SKILL SETS AND RECEIVE EXPOSURE TO MUSIC, DANCE, ARTS AND CAREER AND TECHNICAL EDUCATION PROGRAMS NO LONGER OFFERED IN MANY SCHOOLS.

(3) CREATING THE EXPANDED LEARNING OPPORTUNITIES PROGRAM WILL ENSURE THAT THESE LEARNING EXPERIENCES ARE EQUALLY AVAILABLE TO ALL COLORADO STUDENTS AND THAT FAMILIES WILL HAVE THE AUTHORITY AND RESPONSIBILITY TO DIRECT THOSE FUNDS TO THE EXPERIENCES AND ACTIVITIES THEY BELIEVE TO BE THE BEST FIT FOR THEIR CHILD OR YOUTH.

(4) ENCOURAGING INNOVATION IN THE CREATION AND PROVISION OF EXPANDED LEARNING OPPORTUNITIES WILL BENEFIT COLORADO'S CHILDREN AND YOUTH.

22-86.1-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ADMINISTERING NON-PROFIT" SHALL MEAN THE ORGANIZATION SELECTED BY THE AGENCY PURSUANT TO SECTION 22-86.1-102(2)(j).

(2) "AGENCY" SHALL MEAN THE COLORADO EXPANDED LEARNING OPPORTUNITIES AGENCY CREATED BY SECTION 22-86.1-102.

(3) "ELIGIBLE CONTRIBUTION" SHALL MEAN ANY MONETARY OR IN-KIND CONTRIBUTION FOR WHICH AN INCOME TAX CREDIT IS AUTHORIZED PURSUANT TO SECTION 39-22-121.5.

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(4) "ELIGIBLE STUDENT" SHALL MEAN A CHILD OR YOUTH BETWEEN THE AGES OF THREE AND NINETEEN RESIDING IN COLORADO OR OTHERWISE ELIGIBLE FOR ADMISSION TO PUBLIC SCHOOL WITHIN THE STATE.

(5) "ELIGIBLE TAXPAYER" SHALL MEAN AN INDIVIDUAL, ESTATE, TRUST, OR CORPORATION FOR WHOM A CREDIT IS AUTHORIZED FOR ELIGIBLE CONTRIBUTIONS UNDER SECTION 39-22-121.5.

(6) "OUT-OF-SCHOOL LEARNING EXPERIENCES" SHALL MEAN ANY PROGRAM, SERVICE, MATERIAL, SYSTEM, CURRICULUM, ACTIVITY, OR OTHER PURSUIT OR PURCHASE THAT PROVIDES SUPPLEMENTAL EDUCATIONAL OR DEVELOPMENTAL SUPPORT TO ELIGIBLE STUDENTS OUTSIDE OF NORMAL SCHOOL OPERATIONS. OUT-OF-SCHOOL LEARNING EXPERIENCES SHALL NOT INCLUDE INSTRUCTION, SERVICES, MATERIALS, CURRICULA, OR PROGRAMS PROVIDED AS PART OF A NORMAL COURSE OF STUDY CONDUCTED IN ACCORDANCE WITH A PUBLIC OR PRIVATE SCHOOL STUDENT'S COMPULSORY ATTENDANCE REQUIREMENTS UNDER SECTION 22-33-104 OR A HOME SCHOOL STUDENT'S COMPULSORY INSTRUCTION REQUIREMENTS UNDER SECTION 22-33-104.5.

(7) "PARENT" SHALL MEAN A PARENT OR LEGAL GUARDIAN OF AN ELIGIBLE STUDENT.

(8) "PROGRAM" SHALL MEAN THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM CREATED AND ADMINISTERED UNDER THIS ARTICLE.

22-86.1-102. Expanded Learning Opportunities Agency – establishment – purposes – powers.

(1) THERE IS ESTABLISHED, AS AN INDEPENDENT AGENCY IN THE DEPARTMENT OF EDUCATION, THE COLORADO EXPANDED LEARNING OPPORTUNITIES AGENCY. THE AGENCY SHALL BE GOVERNED AND ADMINISTERED BY A BOARD OF DIRECTORS AND SHALL EXERCISE SUCH POWERS AND PERFORM SUCH DUTIES AND FUNCTIONS AS IF IT WERE TRANSFERRED TO THE DEPARTMENT BY A TYPE 1 TRANSFER UNDER THE PROVISIONS OF THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S.

(2) THE PURPOSES AND POWERS OF THE AGENCY SHALL BE TO:

(a) ESTABLISH AND OVERSEE THE ADMINISTRATION OF THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM CREATED BY THIS ARTICLE;

(b) CREATE AND DEVELOP CRITERIA FOR THE PROVISION AND SELECTION OF ALLOWABLE USES FOR FUNDS DISTRIBUTED BY THE ADMINISTERING NON-PROFIT, CONSISTENT WITH AND IN FURTHERANCE OF THE GOALS AND PURPOSES STATED IN SECTION 22-86.1-100, TO BE PROVIDED WITHIN THE STATE OF COLORADO FOR ELIGIBLE STUDENTS. AT A MINIMUM THESE ALLOWABLE USES SHALL INCLUDE, TUTORING AND SUPPLEMENTAL ACADEMIC INSTRUCTION IN CORE SUBJECT AREAS, INCLUDING READING, MATHEMATICS, SCIENCE, AND WRITING; TARGETED SUPPORT FOR SPECIAL NEEDS AND LEARNING DISABILITIES, ENGLISH LANGUAGE AND FOREIGN LANGUAGE ACQUISITION; IN-DEPTH PROGRAMS THAT TEACH YOUTH NEW SKILLS IN THE CONTEXT OF OUTDOOR ACTIVITIES, CHALLENGING REAL WORLD EXPERIENCES THAT BUILD ESSENTIAL SKILL SETS, AND

OTHER PROGRAMS THAT PROVIDE MUSIC, DANCE, ARTS OR CAREER AND TECHNICAL EDUCATION TRAINING. IT IS THE INTENT OF THE PEOPLE THAT THE FINANCIAL AID DISTRIBUTED BY THE ADMINISTERING NON-PROFIT WILL BE NEW DOLLARS TO SPEND ON NEW SERVICES AND SHALL NOT SUPPLANT EXISTING FUNDING FOR PROGRAMS AVAILABLE TO ELIGIBLE STUDENTS.

(c) CREATE AND DEVELOP CRITERIA FOR PUBLICATION, SOLICITATION, RECEIPT, AND EVALUATION BY THE ADMINISTERING NON-PROFIT OF APPLICATIONS FROM POTENTIAL PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM. SUCH CRITERIA SHALL MAXIMIZE THE NUMBER AND DIVERSITY OF PROVIDERS THAT PARENTS AND ELIGIBLE STUDENTS CAN CHOOSE AND SHALL ALSO ENSURE THAT SMALL COMMUNITY-BASED PROVIDERS ARE ELIGIBLE AND ABLE TO PARTICIPATE IN THE PROGRAM.

(d) CREATE AND DEVELOP CRITERIA UNDER WHICH THE ADMINISTERING NON-PROFIT SHALL CERTIFY PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM, TO INCLUDE PRE-CERTIFICATION OF LOCAL SCHOOL DISTRICTS, LOCAL EDUCATION PROVIDERS, AND BOARDS OF COOPERATIVE EDUCATIONAL SERVICES. NEITHER THE ADMINISTERING NON-PROFIT NOR ANY SUBSIDIARY THEREOF SHALL BE ELIGIBLE FOR CERTIFICATION AS A PROVIDER.

(e) CREATE AND DEVELOP CRITERIA FOR THE ADMINISTERING NON-PROFIT TO ESTABLISH PROCEDURES TO ENSURE STUDENT SAFETY, INCLUDING THE PROVISION OF RECENT BACKGROUND CHECKS FOR PROVIDERS WHO COME IN CONTACT WITH STUDENTS.

(f) CREATE AND DEVELOP CRITERIA FOR THE ADMINISTERING NON-PROFIT TO ESTABLISH AND MANAGE PARENT-CONTROLLED INDIVIDUAL LEARNING ACCOUNTS TO BE FUNDED THROUGH ELIGIBLE CONTRIBUTIONS AND OTHER GIFTS, GRANTS, AND DONATIONS TO THE ADMINISTERING NON-PROFIT, TO COMPENSATE APPROVED PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES. THE INDIVIDUAL LEARNING ACCOUNT FUNDS, ALSO REFERRED TO IN THIS ARTICLE 86.1 AS "FINANCIAL AID," SHALL BE PROVIDED AND ADMINISTERED BY THE ADMINISTERING NON-PROFIT ON A SLIDING SCALE, WITH THE AMOUNT OF A FINANCIAL AID BEING INVERSELY RELATED TO THE FAMILY INCOME AND FINANCIAL MEANS OF AN ELIGIBLE STUDENT, WITH SUCH SLIDING SCALE TO BE DETERMINED AT LEAST ONCE PER CALENDAR YEAR BY THE AGENCY AND SUBJECT TO THE MAXIMUM FINANCIAL AID AMOUNT PER ELIGIBLE STUDENT AS DETERMINED BY THE AGENCY. SUCH FINANCIAL AID SHALL INCLUDE EXPENSES FOR TRANSPORTATION OF AN ELIGIBLE STUDENT TO AND FROM OUT-OF-SCHOOL LEARNING EXPERIENCES. PARENTS SHALL HAVE CONTROL OVER WHEN AND HOW FINANCIAL AID IS DISTRIBUTED TO APPROVED PROVIDERS THAT THE PARENTS CHOOSE, SUBJECT TO ADMINISTRATIVE RULES CREATED BY THE AGENCY AND THE ADMINISTERING NON-PROFIT. SUCH FINANCIAL AID SHALL FURTHER BE PROVIDED AND ADMINISTERED IN A MANNER THAT SHALL NOT DISCRIMINATE AGAINST ANY RECIPIENT, RECIPIENT'S FAMILY, PROVIDER, OR OUT-OF-SCHOOL LEARNING EXPERIENCE ON THE BASIS OF RACE, COLOR, RELIGIOUS AFFILIATION, NATIONAL ORIGIN, GENDER, MILITARY STATUS, SEXUAL ORIENTATION, GENDER VARIANCE, MARITAL STATUS, OR PHYSICAL OR MENTAL DISABILITY. THE AGENCY SHALL ENSURE THAT FINANCIAL AID IS UTILIZED IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES AND THE COLORADO CONSTITUTION.

(g) CREATE AND DEVELOP CRITERIA AND PROTOCOLS FOR ROLLOVER OF UNUSED FUNDS IN A LEARNING ACCOUNT FOR USE BY THE RECIPIENT IN ADDITIONAL OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM. ANY FUNDS IN THE INDIVIDUAL LEARNING ACCOUNT WHEN THE STUDENT NO LONGER QUALIFIES AS AN ELIGIBLE STUDENT SHALL REVERT BACK TO THE ADMINISTERING NON-PROFIT.

(h) ESTABLISH A PROCESS TO SELECT OR CREATE NO LATER THAN AUGUST 1, 2020, THE NON-PROFIT ORGANIZATION TO BE DESIGNATED PURSUANT TO PARAGRAPH (j) OF THIS SUBSECTION. THE AGENCY SHALL CREATE A NEW NON-PROFIT ONLY IF THE AGENCY DETERMINES NO EXISTING NON-PROFITS MEET THE QUALIFICATIONS NECESSARY TO SUCCESSFULLY ADMINISTER THE PROGRAM.

(i) ANNUALLY COLLECT, AND MAKE PUBLICLY AVAILABLE, FINANCIAL AUDITS OF THE ADMINISTERING NON-PROFIT. SUCH AUDITS SHALL BE CONDUCTED BY A CERTIFIED PUBLIC ACCOUNTANT IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING STANDARDS IN THE UNITED STATES AND SHALL BE FILED WITH THE AGENCY BY THE ADMINISTERING NON-PROFIT NO LATER THAN JULY 1 OF EACH YEAR FOR THE PREVIOUS CALENDAR YEAR. THE AGENCY SHALL REDACT ALL NAMES OF TAXPAYERS AND SOCIAL SECURITY NUMBERS OR TAX IDENTIFICATION NUMBERS BEFORE PUBLICLY RELEASING ANY AUDIT OR OTHER FINANCIAL REPORT.

(j) DESIGNATE AND ENTER INTO AN AGREEMENT WITH A COLORADO NON-PROFIT CORPORATION MEETING THE REQUIREMENTS SET FORTH IN THIS PARAGRAPH. SUCH AGREEMENT SHALL DEFINE THE RESPONSIBILITIES AND OBLIGATIONS OF THE ADMINISTERING NON-PROFIT TO OPERATE AND ADMINISTER THE PROGRAM CREATED BY THIS ARTICLE UTILIZING ELIGIBLE CONTRIBUTIONS. ANY NON-PROFIT CORPORATION WITH WHICH THE AGENCY MAY CONTRACT PURSUANT TO THIS SECTION SHALL MEET THE FOLLOWING CRITERIA AND REQUIREMENTS:

(I) THE ADMINISTERING NON-PROFIT SHALL BE DULY INCORPORATED AND IN GOOD STANDING UNDER THE COLORADO REVISED NON-PROFIT CORPORATION ACT, OR ANY SUCCESSOR STATUTE, SHALL HAVE ITS PRINCIPAL PLACE OF BUSINESS LOCATED IN THE STATE OF COLORADO, SHALL BE A SEPARATE AND DISTINCT LEGAL ENTITY AND NEITHER AN AGENCY NOR SUBDIVISION OF THE STATE, AND SHALL BE DEEMED AN INDEPENDENT CONTRACTOR WITH THE AGENCY.

(II) THE ADMINISTERING NON-PROFIT SHALL BE EXEMPT FROM FEDERAL INCOME TAX UNDER 26 U.S.C. § 501(C)(3) OF THE INTERNAL REVENUE CODE.

(III) THE ADMINISTERING NON-PROFIT SHALL BE DEEMED BY THE AGENCY TO BE CAPABLE OF EFFECTIVELY ADMINISTERING THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM SUBJECT TO CRITERIA ESTABLISHED AND DETERMINED BY THE AGENCY. IN THE EVENT THE ADMINISTERING NON-PROFIT CEASES TO BE PARTY TO AN AGREEMENT FOR THIS PURPOSE WITH THE AGENCY, OR UPON TERMINATION OF SUCH AGREEMENT, THE ADMINISTERING NON-PROFIT SHALL IMMEDIATELY CEASE ANY REFERENCES OR REPRESENTATION OF ASSOCIATION WITH THE PROGRAM OR THE AGENCY. UPON TERMINATION OF ANY AGREEMENT WITH THE AGENCY, THE ADMINISTERING NON-PROFIT SHALL REMIT ALL ELIGIBLE CONTRIBUTIONS IN ITS POSSESSION OR CONTROL, LESS SUCH AMOUNT AS MAY BE RETAINED PURSUANT TO SUBPARAGRAPH (IX) OF THIS PARAGRAPH OR

AS MAY OTHERWISE BE SPECIFIED BY THE AGENCY IN ITS AGREEMENT WITH THE ORGANIZATION, TO THE AGENCY.

(IV) THE ADMINISTERING NON-PROFIT SHALL BE GOVERNED BY A VOLUNTEER BOARD OF DIRECTORS. MEMBERS OF THE BOARD OF DIRECTORS SHALL NOT BE ENTITLED TO COMPENSATION, BUT SHALL BE ENTITLED TO REIMBURSEMENT FOR REASONABLE OUT-OF-POCKET EXPENSES INCURRED IN THE PERFORMANCE OF THEIR BOARD DUTIES.

(V) (A) ANY RECORDS OF THE ADMINISTERING NON-PROFIT RELATED TO THE ADMINISTRATION OF THE PROGRAM SHALL BE AVAILABLE AT ALL TIMES TO THE AGENCY AND SHALL BE TREATED AS PUBLIC RECORDS SUBJECT TO PRODUCTION UNDER THE COLORADO OPEN RECORDS ACT, SECTION 24-72-201, ET SEQ., UPON REQUEST MADE TO THE AGENCY.

(B) THE ADMINISTERING NON-PROFIT SHALL FILE PERIODIC REPORTS DETAILING THE CONTRIBUTIONS RECEIVED AND FINANCIAL AID PROVIDED THROUGHOUT EACH CALENDAR YEAR. SUCH REPORTS SHALL BE FILED ON A TIMELINE TO BE DETERMINED BY THE AGENCY, EXCEPT THAT THE AGENCY SHALL NOT REQUIRE THE ADMINISTERING NON-PROFIT TO FILE SUCH REPORTS MORE THAN FOUR TIMES PER CALENDAR YEAR.

(C) THE ADMINISTERING NON-PROFIT SHALL SUBMIT IN A TIMELY MANNER ANY INFORMATION REQUESTED BY THE AGENCY THAT RELATES TO THE PROGRAM, INCLUDING WITHOUT LIMITATION INFORMATION THAT IS REQUESTED IN SUPPORT OF ANY EVALUATION THE PROGRAM OR ITS ADMINISTRATION.

(VI) THE ADMINISTERING NON-PROFIT MAY SOLICIT AND RECEIVE ELIGIBLE CONTRIBUTIONS. THE ADMINISTERING NON-PROFIT MAY ALSO SOLICIT AND RECEIVE GIFTS, GRANTS, AND DONATIONS FOR PURPOSES OF ADMINISTERING AND FUNDING THE PROGRAM. THE SOURCES AND AMOUNTS OF ALL ELIGIBLE CONTRIBUTIONS SHALL BE REPORTED IMMEDIATELY TO THE AGENCY. NO ELIGIBLE CONTRIBUTIONS MAY BE EARMARKED OR RESTRICTED IN ANY MANNER BY AN ELIGIBLE TAXPAYER FOR THE BENEFIT OF OR TO EXCLUDE ANY INDIVIDUAL OR CLASS OF RECIPIENTS OR ANY INDIVIDUAL OR CLASS OF PROVIDERS.

(VII) SUBJECT TO CRITERIA DETERMINED AND ESTABLISHED BY THE AGENCY, THE ADMINISTERING NON-PROFIT SHALL DEVELOP, ESTABLISH, AND MANAGE SYSTEMS AND PROCEDURES FOR PUBLICATION, SOLICITATION, RECEIPT, EVALUATION, AND SELECTION OF APPLICATIONS FROM POTENTIAL PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM TO WHICH PARENTS MAY DIRECT FINANCIAL AID; ENTER INTO AGREEMENTS AND CONTRACTS AS NECESSARY WITH APPROVED PROVIDERS OF OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM; DEVELOP, ESTABLISH, AND MANAGE A SYSTEM FOR RECEIPT, PROCESSING, AND EVALUATION OF APPLICATIONS FROM ELIGIBLE STUDENTS; PROVIDE SERVICES DIRECTLY OR THROUGH THIRD-PARTY CONTRACT TO ASSIST ELIGIBLE STUDENTS, PARENTS, AND THEIR FAMILIES IN NAVIGATING AND SELECTING AMONG AVAILABLE OUT-OF-SCHOOL LEARNING EXPERIENCES; ESTABLISH AND MANAGE INDIVIDUAL LEARNING ACCOUNTS, TO BE FUNDED THROUGH ELIGIBLE CONTRIBUTIONS TO THE ADMINISTERING NON-PROFIT, TO PAY APPROVED PROVIDERS OF APPROVED OUT-OF-SCHOOL LEARNING EXPERIENCES; AND PROVIDE, DIRECTLY OR BY CONTRACT, TECHNOLOGY SERVICES, SUBJECT TO CRITERIA ESTABLISHED AND DETERMINED BY

THE AGENCY, FOR PURPOSES OF MONITORING AND TRACKING THE USE OF INDIVIDUAL LEARNING ACCOUNTS BY ELIGIBLE STUDENTS AND APPROVED PROVIDER PERFORMANCE AND PAYMENTS;

(VIII) EXCEPT AS PROVIDED IN SUB-PARAGRAPH (IX) OF THIS PARAGRAPH, NO MORE THAN TEN PERCENT OF THE ELIGIBLE CONTRIBUTIONS RECEIVED BY THE ADMINISTERING NON-PROFIT IN ANY CALENDAR YEAR MAY BE RETAINED AND SPENT ON ADMINISTRATIVE EXPENSES. ON OR AFTER JANUARY 1, 2023, THE AGENCY SHALL, IN CONSULTATION WITH THE ADMINISTERING NON-PROFIT, REVIEW THE PERCENTAGE OF ELIGIBLE CONTRIBUTIONS THAT CAN BE RETAINED AND SPENT ON ADMINISTRATIVE EXPENSES AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING ANY APPROPRIATE CHANGES TO SUCH PERCENTAGE; AND

(IX) ELIGIBLE CONTRIBUTIONS RECEIVED BY THE ORGANIZATION PRIOR TO JANUARY 1, 2021, MAY BE RETAINED BY THE ADMINISTERING NON-PROFIT FOR ADMINISTRATIVE AND ORGANIZATIONAL START-UP PURPOSES.

(3) THE AGENCY SHALL BE SUBJECT TO ALL REQUIREMENTS OF THE COLORADO OPEN RECORDS ACT, SECTION 24-72-201, ET SEQ.

(4) THE AGENCY MAY SOLICIT AND RECEIVE GIFTS, GRANTS, AND DONATIONS THAT MAY BE RETAINED AND SPENT ON ADMINISTRATIVE EXPENSES, TO INCLUDE SALARIES AND OFFICE EXPENSE, REIMBURSEMENT TO MEMBERS OF THE AGENCY BOARD OF DIRECTORS APPOINTED IN ACCORDANCE WITH SECTION 22-86.1-103(1) (a), ROUTINE BUSINESS EXPENSES SUCH AS INSURANCE, ACCOUNTING, AND LEGAL EXPENSES, AND ANY SIMILAR OVERHEAD EXPENSES INCURRED BY THE AGENCY.

22-86.1-103. Expanded Learning Opportunities Agency -- board of directors -- powers and duties. (1)(a) THE AGENCY SHALL BE OVERSEEN AND ADMINISTERED BY A BOARD OF DIRECTORS APPOINTED JOINTLY BY THE GOVERNOR AND EITHER THE SPEAKER OR MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES WHO SHALL NOT BE AFFILIATED WITH THE SAME POLITICAL PARTY AS THE GOVERNOR, WITH AT LEAST ONE DIRECTOR RESIDENT IN EACH OF THE STATE'S CONGRESSIONAL DISTRICTS. IF THE TOTAL NUMBER OF CONGRESSIONAL DISTRICTS IS AN EVEN NUMBER, ONE ADDITIONAL AT-LARGE MEMBER SHALL BE APPOINTED. DIRECTORS SHALL BE APPOINTED FOR TERMS OF FOUR YEARS, EXCEPT THAT AT LEAST ONE-HALF OF THE INITIALLY APPOINTED DIRECTORS SHALL BE APPOINTED FOR A TWO-YEAR TERM TO ASSURE STAGGERED TERMS. THE BOARD'S COMPOSITION SHALL, TO THE EXTENT PRACTICAL, REFLECT COLORADO'S GENDER, ETHNIC, RACIAL, AND POLITICAL DIVERSITY. MEMBERS OF THE BOARD MAY NOT DURING THEIR TERMS OF SERVICE BE EMPLOYED BY OR CONTRACT WITH ORGANIZATIONS, PUBLIC AGENCIES, OR INDIVIDUALS THAT PROVIDE OR OFFER TO PROVIDE OUT-OF-SCHOOL LEARNING EXPERIENCES UNDER THE PROGRAM. MEMBERS OF THE BOARD MAY SERVE MORE THAN A SINGLE TERM, AND MEMBERS SHALL BE SUBJECT TO REMOVAL AS PROVIDED IN ARTICLE IV, SECTION 6, OF THE COLORADO CONSTITUTION.

(b) MEMBERS OF THE BOARD SHALL NOT BE ENTITLED TO COMPENSATION, BUT THEY SHALL BE PROVIDED REASONABLE PER DIEM AND REIMBURSEMENT FOR EXPENSES INCURRED IN FURTHERANCE OF THEIR RESPONSIBILITIES AS MEMBERS OF THE BOARD.

(2) THE BOARD SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(a) TO HIRE AN EXECUTIVE DIRECTOR AND STAFF;

(b) TO ESTABLISH AND OVERSEE THE PROGRAM CREATED BY THIS ARTICLE, ASSURING THAT AS MUCH FUNDING AS PRACTICABLE IS DEDICATED TO THE PROVISION OF FINANCIAL AID AND ASSISTANCE TO ELIGIBLE STUDENTS AND THEIR FAMILIES IN FINDING AND SELECTING AVAILABLE OUT-OF-SCHOOL LEARNING EXPERIENCES;

(c) TO PERFORM ALL SUCH ACTIONS AS MAY BE NECESSARY AND APPROPRIATE TO CARRY OUT THE DUTIES AND RESPONSIBILITIES SPECIFIED IN SECTION 22-86.1-102 OF THIS ARTICLE;

(d) TO OBTAIN THE SERVICES OF EXPERT CONSULTANTS AS NECESSARY AND APPROPRIATE FOR THE PERFORMANCE OF ITS DUTIES AND RESPONSIBILITIES;

(e) TO PROMULGATE RULES AND REGULATIONS IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24, AS ARE NECESSARY OR EXPEDIENT FOR THE CONDUCT OF ITS AFFAIRS AND GENERALLY FOR THE ADMINISTRATION OF THE PROGRAM ESTABLISHED BY THIS ARTICLE;

(f) TO SUE AND BE SUED IN ITS OWN NAME;

(g) TO INCUR DEBTS, LIABILITIES, AND OBLIGATIONS, SUBJECT TO ANY LIMITATIONS IMPOSED THEREON PURSUANT TO LAW;

(h) TO PROVIDE FOR THE NECESSARY EXPENSES OF THE BOARD IN THE EXERCISE OF ITS POWERS AND THE PERFORMANCE OF ITS DUTIES AND TO REIMBURSE A BOARD MEMBER FOR NECESSARY AND APPROPRIATE EXPENSES INCURRED IN THE PERFORMANCE OF THE BOARD MEMBERS' DUTIES;

(i) TO PROVIDE FOR THE PROPER KEEPING OF ACCOUNTS AND RECORDS AND FOR BUDGETING OF FUNDS; AND

(j) TO ACT AS A PUBLIC ENTITY FOR PURPOSES OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 TO TITLE 24, C.R.S.

22-86.1-104. Sunset and reauthorization. THIS ARTICLE SHALL CEASE TO HAVE EFFECT AFTER DECEMBER 31, 2030, UNLESS EXTENDED OR REAUTHORIZED BY THE GENERAL ASSEMBLY.

SECTION 2. In Colorado Revised Statutes, add 39-22-121.5 as follows:

39-22-121.5. Credit for contribution toward out-of-school learning experiences provided under the Colorado Expanded Learning Opportunities Program. (1) FOR TAXABLE YEARS COMMENCING ON OR AFTER JANUARY 1, 2020, THERE SHALL BE ALLOWED A CREDIT TO EVERY INDIVIDUAL, ESTATE, TRUST, AND CORPORATION AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR MONETARY AND IN-KIND CONTRIBUTIONS DURING THE TAXABLE YEAR TO THE NON-PROFIT ORGANIZATION SELECTED TO ADMINISTER THE COLORADO EXPANDED LEARNING

OPPORTUNITIES PROGRAM PURSUANT TO SECTION 22-86.1-102(2)(j). A CREDIT ALLOWED TO ANY INDIVIDUAL, ESTATE, TRUST, OR CORPORATION SHALL IN NO EVENT EXCEED THE TAXPAYER'S ACTUAL INCOME TAX LIABILITY FOR THE TAX YEAR FOR WHICH THE CREDIT IS CLAIMED, EXCEPT THAT A TAXPAYER MAY CARRY FORWARD ANY PORTION OF CREDIT EARNED IN EXCESS OF INCOME TAX LIABILITY FOR UP TO THREE TAX YEARS. A TAXPAYER MAY NOT CONVEY, ASSIGN, OR TRANSFER A CREDIT OR CARRY-FORWARD PORTION OF A CREDIT TO ANOTHER PERSON OR ENTITY.

(2) THE TOTAL AMOUNT OF CREDITS ALLOWED UNDER THIS SECTION IN ANY STATE FISCAL YEAR (THE "FISCAL YEAR CREDIT CAP") SHALL BE FIFTY MILLION DOLLARS. IN ANY STATE FISCAL YEAR IN WHICH TOTAL CREDITS CLAIMED UNDER THIS SECTION EQUAL OR EXCEED NINETY PERCENT OF THE THEN-APPLICABLE FISCAL YEAR CREDIT CAP, THE FISCAL YEAR CREDIT CAP SHALL AUTOMATICALLY INCREASE BY FIFTY MILLION DOLLARS FOR THAT STATE FISCAL YEAR AND SUCCEEDING STATE FISCAL YEARS, UP TO A MAXIMUM FISCAL YEAR CREDIT CAP OF ONE PERCENT OF THE TOTAL COMBINED REVENUE APPROPRIATED TO THE GENERAL FUND AND STATE CASH FUND FOR THE IMMEDIATELY PRECEDING COMPLETED STATE FISCAL YEAR. TAXPAYERS SHALL BE ALLOWED CREDITS UNDER THIS SECTION, SUBJECT TO THE THEN APPLICABLE FISCAL YEAR CREDIT CAP, IN THE ORDER IN WHICH SUCH CLAIMS FOR ALLOWANCE ARE RECEIVED BY THE DEPARTMENT. THE DEPARTMENT SHALL PUBLISH ON ITS WEBSITE INFORMATION IDENTIFYING THE APPLICABLE FISCAL YEAR CREDIT CAP AND ANY THEN APPLICABLE INCREASES IN THE FISCAL YEAR CREDIT CAP REQUIRED BY THIS SUBSECTION.

(3) CONTRIBUTIONS TO THE ADMINISTERING NON-PROFIT ORGANIZATION SELECTED TO ADMINISTER THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM PURSUANT TO SECTION 22-86.1-102(2)(j) FOR WHICH A CREDIT IS CLAIMED UNDER THIS SECTION MAY NOT BE DIRECTED, RESTRICTED, OR CONDITIONED IN ANY MANNER TO THE BENEFIT OR EXCLUSION OF ANY PARTICULAR ACTUAL OR POTENTIAL INDIVIDUAL OR CLASS OF FINANCIAL AID RECIPIENTS OR ACTUAL OR POTENTIAL INDIVIDUAL OR CLASS OF PROVIDERS CONTRACTING WITH THE NON-PROFIT ORGANIZATION SELECTED TO ADMINISTER THE COLORADO EXPANDED LEARNING OPPORTUNITIES PROGRAM PURSUANT TO SECTION 22-86.1-102(2)(j).

(5) THIS SECTION SHALL CEASE TO HAVE EFFECT AFTER DECEMBER 31, 2030, UNLESS EXTENDED OR REAUTHORIZED BY THE GENERAL ASSEMBLY.

SECTION 3. In Colorado Revised Statutes, add article 28.6 to title 39 as follows:

ARTICLE 28.6
TAXES ON NICOTINE PRODUCTS

39-28.6-101. Definitions. UNLESS THE CONTEXT OTHERWISE REQUIRES, ANY TERMS NOT DEFINED IN THIS ARTICLE 28.6 HAVE THE MEANINGS SET FORTH IN ARTICLE 26 OF THIS TITLE 39. AS USED IN THIS ARTICLE 28.6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "NICOTINE PRODUCT" MEANS ANY NONLIGHTED, NONCOMBUSTIBLE PRODUCT THAT EMPLOYS A MECHANICAL HEATING ELEMENT, BATTERY, OR ELECTRONIC CIRCUIT REGARDLESS OF SHAPE OR SIZE AND THAT CAN BE USED TO PRODUCE VAPOR FROM NICOTINE IN A SOLUTION. THE TERM INCLUDES ANY VAPOR CARTRIDGE OR OTHER CONTAINER OF NICOTINE IN A SOLUTION OR

OTHER FORM THAT IS INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR DEVICE. "NICOTINE PRODUCT" DOES NOT INCLUDE A "TOBACCO PRODUCT" AS DEFINED IN SECTION 39-28.5-101(5).

39-28.6-102. Sales tax on nicotine products – administration – enforcement. THE TAX IMPOSED PURSUANT TO THIS ARTICLE SHALL BE ADMINISTERED AND ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 21 OF THIS TITLE AND PART 1 OF ARTICLE 26 OF THIS TITLE, INCLUDING, WITHOUT LIMITATION, ANY PENALTIES FOR FAILURE TO MAKE ANY RETURN OR TO COLLECT OR PAY ANY TAX; EXCEPT THAT, IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS ARTICLE AND THE PROVISIONS OF ARTICLE 21 OF THIS TITLE OR PART 1 OF ARTICLE 26 OF THIS TITLE, THE PROVISIONS OF THIS ARTICLE SHALL CONTROL.

39-28.6-103. Nicotine products sales tax. IN ADDITION TO THE TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26 OF THIS TITLE 39 AND THE SALES TAX IMPOSED BY A LOCAL GOVERNMENT PURSUANT TO TITLE 29, 30, 31, OR 32, BEGINNING JANUARY 1, 2020, THERE IS IMPOSED UPON ALL SALES OF NICOTINE PRODUCTS BY A RETAILER A TAX IN THE AMOUNT OF FIVE CENTS PER MILLILITER OR DEVICE. THE TAX IMPOSED BY THIS SECTION IS COMPUTED IN ACCORDANCE WITH SCHEDULES OR FORMS PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE; EXCEPT THAT A RETAILER IS NOT ALLOWED TO RETAIN ANY PORTION OF THE TAX ON SALES OF NICOTINE PRODUCTS COLLECTED PURSUANT TO THIS ARTICLE TO COVER THE EXPENSES OF COLLECTING AND REMITTING THE TAX. THE EXECUTIVE DIRECTOR MAY PROMULGATE RULES TO IMPLEMENT THIS SECTION.

39-28.6-104. Disposition of collections. (1) THE STATE TREASURER SHALL CREDIT THE NET REVENUE COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE TO THE COLORADO EXPANDED LEARNING OPPORTUNITIES AGENCY CREATED IN THE DEPARTMENT OF EDUCATION AS SPECIFIED IN SECTION 22-86.1-102, TO BE UTILIZED AND APPLIED BY SUCH AGENCY EXCLUSIVELY FOR ADMINISTRATIVE AND OPERATIONAL EXPENSES OF THE AGENCY; NO REVENUE COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE MAY BE USED TO FUND INDIVIDUAL LEARNING ACCOUNTS ESTABLISHED PURSUANT TO SECTION 22-86.1-102(2)(f) OR DIRECTED TO THE ADMINISTERING NONPROFIT DESIGNATED UNDER SECTION 22-86.1-102(2)(j);

(2) THE VOTERS HEREBY FIND AND DECLARE THAT BECAUSE THE SALES AND USE TAX REVENUE GENERATED BY THE SALES AND USE TAX LEVIES PURSUANT TO SECTIONS 39-26-106 AND 39-26-202 IS SUFFICIENT TO FUND THE OLD AGE PENSION FUND AS REQUIRED BY ARTICLE XXIV OF THE STATE CONSTITUTION, THE STATE MAY CONSTITUTIONALLY CREDIT ALL REVENUE GENERATED BY THE ADDITIONAL SALES AND USE TAXES LEVIED PURSUANT TO THIS ARTICLE TO THE COLORADO OUT-OF-SCHOOL EDUCATION FUND AS SPECIFIED IN SUBSECTION (1) OF THIS SECTION.

39-28.6-105. Effect of voter approval – revenue, spending, and other limitations. REVENUE COLLECTED UNDER THE PROVISIONS OF THIS ARTICLE, AS AUTHORIZED BY THE VOTERS AT THE STATEWIDE ELECTION IN NOVEMBER 2019, TOGETHER WITH EARNINGS ON SUCH REVENUE, SHALL BE RETAINED AND SPENT BY THE STATE AS A VOTER-APPROVED REVENUE CHANGE AND SHALL BE EXEMPT FROM ALL REVENUE, SPENDING, AND OTHER LIMITATIONS UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER LAW.

39-28.6-106. Sunset and reauthorization. THIS ARTICLE SHALL CEASE TO HAVE EFFECT AFTER DECEMBER 31, 2030, UNLESS EXTENDED OR REAUTHORIZED BY THE GENERAL ASSEMBLY.