



COLORADO

**Colorado Water
Conservation Board**

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Lauren Miremont, Finance Manager
Kirk Russell, P.E., Finance Section Chief

DATE: November 17, 2021

AGENDA ITEM: Consent Agenda 3.
Financial Policy 3 - Loan Delinquency, Loan Restructuring and
Collections Policy Update

Staff Recommendation: Staff recommends updating CONSTRUCTION FUND AND SEVERANCE TAX TRUST FUND PERPETUAL BASE FUND LOAN DELINQUENCY, LOAN RESTRUCTURING AND COLLECTION, as presented, to reflect statutory changes enacted by SB21-055, which changes responsibility of the collection of debts, owed to the State from “State Central Collection Agency” to individual departments.

Background: With the passage of SB21-055, there is no longer a State Agency dedicated to the collection of debts owed to the State. Individual departments are now tasked with the responsibility to collect their own debts. Fiscal Rules have been developed by the Office of the State Controller to guide departments and approved vendors have been selected. This policy update reflects this change and only updates the words “state central collections” to “a collection agency approved by the Office of the State Controller”.

POLICY NUMBER: 3

SUBJECT: **CONSTRUCTION FUND AND SEVERANCE TAX TRUST
FUND PERPETUAL BASE FUND LOAN DELINQUENCY,
LOAN RESTRUCTURING AND COLLECTION**

EFFECTIVE DATE: October 1, 1999

REVISED DATE: November 16, 2017

REVISED DATE: November 17, 2021

POLICY: The Colorado Water Conservation Board (CWCB) shall review all loans for which annual payments are 180 days, or more, past due. The Board's review shall include an examination of the Project Sponsor's payment history, Project Sponsor statements regarding extenuating circumstances and reasons for the delinquent or non-payment, and the consideration of problem solving opportunities, including referral for collection.

PURPOSE: To provide the Board with information regarding past due loan payments. This policy will allow Project Sponsors a reasonable time to make late loan payments, restructure their existing loan or develop other financial solutions to recover from periods of economic difficulties, drought, flood, or other hardships beyond their control. This policy will also define how loans will be referred to collections.

APPLICABILITY: This policy and procedure applies to ALL current and future loans from the CWCB Construction Fund and the Severance Tax Trust Fund Perpetual Base Fund.

PROCEDURE: The statutes and provisions in the loan contract and contract documents provide the Board several options in dealing with delinquent loan payments, including, but not limited to, the following:

- Deferral of the loan payment
- Restructuring the loan terms
- Assessment of a revised loan interest rate
- Assessment of a late charge fee
- Forgive all or part of the loan
- Debt referral to ~~the State Central Collections Agency~~ A
COLLECTIONS AGENCY APPROVED BY THE
OFFICE OF THE STATE CONTROLLER

At every Board meeting, staff will give the Board a comprehensive delinquency list or Loan Aging Schedule. The report will include a list of loan payments that are past due and the date payment was due.

To initiate loan re-payment, staff will send a reminder letter to each Project Sponsor 30 days prior to the loan payment due date.

In the event of a delinquency, staff will send a reminder letter to each Project Sponsor every 30 days. A late fee of 5% of the current annual payment may be assessed for loan payments not received within 60 days of the due date.

Staff will contact the Project Sponsor by phone concerning a loan payment that is 60 days past due to remind the Project Sponsor of its debt obligation and to determine the extenuating circumstances preventing the Project Sponsor from meeting that obligation. Staff and the Project Sponsor will then agree upon an alternate date by which the payment will be made. If the Project Sponsor makes the payment as agreed all late fees associated with the delinquency may be waived at the discretion of the Director or his designee.

Staff will refer all loans to the Board, for which any individual loan payment is at least 180 days past due with a specific recommendation for one of the following actions, depending on the individual circumstance:

- Deferral of the loan payment
- Restructuring the loan terms
- Assessment of an accelerated loan interest rate
- Accelerate the loan

If the delinquency continues, and is at least one year past due, staff will recommend that the Board either:

- Refer the bad debt to a ~~Central Collections~~ A COLLECTIONS AGENCY APPROVED BY THE OFFICE OF THE STATE CONTROLLER and/or the Attorney General's Office to take appropriate legal action against the Project Sponsor
- Forgive all or part of the loan
- Continue to work with the Project Sponsor towards a successful re-payment schedule.



An Act

SENATE BILL 21-055

BY SENATOR(S) Moreno, Hansen, Rankin;
also REPRESENTATIVE(S) Ransom, Herod, McCluskie, Bockenfeld,
Esgar, Lynch, Pelton, Ricks, Sandridge, Snyder, Williams.

CONCERNING THE COLLECTION OF DEBTS OWED TO THE STATE, AND, IN
CONNECTION THEREWITH, MAKING AND REDUCING AN
APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **amend** 24-30-202.4 as follows:

24-30-202.4. Collection of debts due the state - state agency options - controller's duties - offsetting disbursements - definitions - repeal. (1) A STATE AGENCY IS RESPONSIBLE FOR THE COLLECTION OF ANY DEBT OWED TO IT. The **state** controller shall advise ~~and assist~~ the various state agencies concerning the collection of debts due the state through **such** THE agencies, in accordance with THE FISCAL rules promulgated by the ~~executive director of the department of personnel~~ CONTROLLER IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION, to achieve the prompt collection of debts due **such** THE agencies. ~~The controller may delegate the~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

responsibility for the collection of debts to the central collection services section of the division of finance and procurement, or any successor section, in the department.

(2) (a) ~~Except as otherwise provided for institutions of higher education pursuant to section 23-5-113, and except for those debts under the jurisdiction of the department of revenue referred to in section 24-35-108 (1)(a), under the jurisdiction of the judicial department referred to in section 16-11-101.6, under the jurisdiction of the department of state referred to in section 1-45-111.5, and under the jurisdiction of the department of labor and employment related to overpayment of unemployment insurance benefits and delinquent taxes referred to in section 8-79-102, all state agencies shall refer to the state controller debts due the state that the agency has been unable to collect within thirty days after such debts have become past due, together with the data and information necessary for the controller to institute collection procedures. Debts are not subject to referral pursuant to this subsection (2) if payment arrangements have been made and payments due in accordance with the terms of the arrangements are not delinquent. The controller may grant a waiver to the requirement that a state agency refer debts within such thirty-day period based upon a documented request and justification provided by a state agency, pursuant to rules promulgated by the department of personnel under article 4 of this title 24. A waiver may include extended periods to collect delinquent debts. For accounts where no waiver to assignment has been granted, the controller shall use all state collection capabilities to collect that debt, including the certification of that debt to the department of revenue for offset of that debt against any tax refund due the debtor under the provisions of subsection (3)(a)(II) of this section. No later than one hundred eighty days after receipt by the controller, the controller or the controller's designee shall legally assign all debts that are not claims in process of collection to private counsel or private collection agencies that appear on the list of private counsel or private collection agencies. For the purposes of this section, "claims in process of collection" means any debts on which payments are being made, on which payments have been promised, on which suit has been brought, or any other debts as defined in rules promulgated by the department of personnel pursuant to article 4 of this title 24. THE CONTROLLER SHALL PROMULGATE FISCAL RULES FOR COLLECTION OF DEBTS DUE TO A STATE AGENCY; EXCEPT THAT THE FISCAL RULES DO NOT APPLY TO THOSE DEBTS UNDER THE JURISDICTION OF THE DEPARTMENT OF REVENUE REFERRED TO IN SECTION 24-35-108 (1)(a). THE CONTROLLER SHALL~~

INCLUDE IN THE FISCAL RULES ANY REQUIREMENTS FOR A STATE AGENCY TO REFER A DEBT TO PRIVATE COUNSEL OR A PRIVATE COLLECTION AGENCY UNDER SUBSECTION (2)(b) OF THIS SECTION OR TO CERTIFY A DEBT TO THE DEPARTMENT OF REVENUE UNDER SUBSECTION (2.5) OF THIS SECTION.

(b) A STATE AGENCY MAY REFER THE DEBT TO A PRIVATE COUNSEL OR PRIVATE COLLECTION AGENCY. THE CONTROLLER SHALL ESTABLISH A LIST OF PRIVATE COUNSEL OR PRIVATE COLLECTION AGENCIES THAT A STATE AGENCY MAY CONTRACT WITH FOR DEBT COLLECTION SERVICES. THE CONTROLLER MUST SELECT the private counsel or private collection agencies included in the list of private counsel or private collection agencies ~~must be selected~~ through competition pursuant to the "Procurement Code", articles 101 to 112 of this title 24. ~~Criteria for selection of the private counsel or private collection agencies shall be developed by the executive director of the department of personnel in consultation with the controller, affected state agencies, and the private collection community.~~

~~(2.5) (a) The department of personnel may provide debt collection services, including lottery offsets, limited gaming offsets, and state tax refund offsets, for accounts assigned to central collection services by political subdivisions of the state under contract with central collection services. The provisions of this section governing the time for referral of accounts to private collection agencies, write off, release, or compromise of debts does not govern the debt collection services provided to political subdivisions except as agreed between the department and such political subdivisions or state agencies and institutions. A STATE AGENCY MAY CERTIFY THE AMOUNT OF A DEBT DUE TO THE STATE TO THE DEPARTMENT OF REVENUE IN ORDER FOR THE DEPARTMENT TO PROVIDE LOTTERY OFFSETS IN ACCORDANCE WITH SECTION 24-30-202.7, AND AN OFFSET OF A STATE TAX REFUND DUE THE DEBTOR UNDER SECTION 39-21-108 (3), AND TO THE REGISTRY OPERATOR IN ORDER FOR THE REGISTRY OPERATOR TO PROVIDE LIMITED GAMING OFFSETS IN ACCORDANCE WITH THE "GAMBLING PAYMENT INTERCEPT ACT", PART 6 OF ARTICLE 35 OF THIS TITLE 24.~~

~~(b) Upon verification by the appropriate state agency, state-supported institution of higher education, or political subdivision of the state of the amount of a debt due the state, institution, or political subdivision, the state controller may certify to the department of revenue any unpaid debt to be offset against a tax refund due the debtor pursuant to section 39-21-108 (3), C.R.S. Before certifying an unpaid debt to the~~

~~department of revenue, the state controller shall give written notice to the debtor that the debt will be offset against a tax refund due the debtor and that the debtor may, within thirty days of the postmark of the written notice, request a hearing to dispute the tax refund offset. Such a hearing must be held within thirty calendar days following receipt of the request from the debtor. If the agency, institution, or political subdivision that referred the debt to the controller certifies that the debt was the subject of a final agency determination or judicial decision or that the debt has been reduced to judgment, the debtor may not dispute the validity of the debt at the hearing. If, at the hearing, the dispute is resolved in favor of the debtor, the debtor is entitled to a refund of any money due plus interest, if requested, pursuant to sections 39-21-110 and 39-21-110.5, C.R.S. The executive director of the department of personnel shall promulgate rules, in accordance with article 4 of this title, that specify provisions for adequate notice and opportunity for hearing. The state controller may write off, release, or compromise, any debt as authorized by paragraph (c) of subsection (3) of this section.~~

~~(3) (a) (I) Upon referral to the controller of debts due the state, the controller shall institute procedures for collection thereof pursuant to the rules and regulations promulgated therefor by the executive director of the department of personnel.~~

~~(II) Upon verification by the appropriate state agency of the amount of the debt due the state, the controller may certify to the department of revenue any unpaid debt due the state to be offset against a tax refund due the debtor, pursuant to section 39-21-108 (3), C.R.S. Before any unpaid debt is certified to the department of revenue, the controller shall give written notice to the debtor that the debt shall be offset against a tax refund due the debtor and shall notify the debtor that the debtor may, within thirty days of the postmark of the written notice from the controller, request a hearing to dispute the tax refund offset. Such hearing shall be held within thirty calendar days from receipt of the request from the debtor. If the agency that referred the debt to the controller certifies that the debt was the subject of a final agency determination or judicial decision or that the debt has been reduced to judgment, the debtor may not dispute the validity of the debt at the hearing. No money shall be refunded or offset against a tax refund due the debtor if such a hearing is requested until such time as the hearing is completed and a decision is rendered. If at the hearing the dispute is resolved in favor of the debtor, the debtor shall be entitled to a refund of any moneys due plus interest, pursuant to section 39-21-110.5, C.R.S.~~

~~Provisions for adequate notice and opportunity for hearing shall be made by rules and regulations promulgated by the executive director of the department of personnel. Any debts may be written off, released, or compromised pursuant to paragraph (c) of this subsection (3).~~

(b) (Deleted by amendment, L. 91, p. 839, § 1, effective January 1, 1992.)

(c) The state controller, with the consent of the state treasurer, is authorized to ~~write off~~, release or compromise any debt due the state, but only in accordance with the rules applicable thereto. Such rules may provide delegated authority and criteria for ~~write off~~, release and compromise of debts and may include provisions to prohibit the referral of debts for tax offset based on the age or amounts of debts. ~~The rules governing write off, release, and compromise of debts may include provisions authorizing the collection of principal, interest, and other collection fees and costs, including the fees required in subsection (8) of this section.~~

(d) Proceeds of debts collected by ~~the state controller~~ A STATE AGENCY or by a private counsel or private collection agency ~~shall be~~ ARE accounted for and paid into the fund from which the receivable was derived, and if the fund is no longer in existence, it ~~shall be~~ IS paid into the general fund. ~~Revenues collected by the controller to pay for state collection activities shall be deposited in the debt collection fund.~~

(e) (I) There is hereby created in the state treasury a fund to be known as the debt collection fund. Subject to annual appropriation by the general assembly, moneys in the debt collection fund may be used by the controller to offset a shortfall during the fiscal year in the revenue available to pay for the expenses incurred by the controller in collecting debts owed the state. The debt collection fund balance at the end of any fiscal year shall not exceed twenty-five percent of the annual appropriated budget for the collection of debts owed the state. Net revenues collected in excess of twenty-five percent of the debt collection fund balance shall revert to the general fund at the end of each fiscal year.

(II) ON JUNE 30, 2021, THE STATE TREASURER SHALL TRANSFER THE BALANCE IN THE DEBT COLLECTION FUND TO THE GENERAL FUND. THIS SUBSECTION (3)(e) IS REPEALED, EFFECTIVE JULY 1, 2021.

~~(f) Notwithstanding any provision of paragraph (c) of this subsection (3) to the contrary, on June 30, 2012, the state treasurer shall deduct two hundred forty-nine thousand four hundred ninety-four dollars from the debt collection fund and transfer such sum to the general fund.~~

~~(g) Notwithstanding any provision of this section to the contrary, for the 2011-12 fiscal year the general assembly may appropriate moneys in the debt collection fund created in paragraph (c) of this subsection (3) to the department of revenue for the purpose of modifying the program administered through the "Gambling Payment Intercept Act", part 6 of article 35 of this title, to include the collection of unpaid debts due to the state.~~

(3.5) (a) (I) The controller shall approve disbursements from state funds from the state's central accounting system in accordance with section 24-30-202 (2). ~~If the controller finds that there is an unpaid balance or debt owing to state agency claimants for any of the following, the controller, upon notice of withholding to the payee, shall~~ OWED, A STATE AGENCY MAY DIRECT THE CONTROLLER TO withhold the amount of the disbursement that does not exceed the amount of: ~~the unpaid balance or debt.~~

(A) Any unpaid child support debt as set forth in section 14-14-104, ~~E.R.S.~~, or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, ~~E.R.S.~~, as certified by the department of human services;

(B) Any unpaid balance of tax, accrued interest, or other charges specified in article 21 of title 39, ~~E.R.S.~~, that is subject to offset under section 39-21-108 (3), ~~E.R.S.~~, and owing by the payee according to the records of the controller;

(C) Any unpaid debt owing to the state or any agency thereof by ~~such~~ A payee, the amount of which is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment; ~~as certified by the controller;~~

(D) Any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1)(p), ~~E.R.S.~~, found to be owing to ~~such~~ THE division by ~~such~~ A payee as a result of final agency determination; or

(E) Any amount required to be paid to the unemployment compensation fund pursuant to articles 70 to 82 of title 8, ~~C.R.S.~~, the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment by the division of unemployment insurance in the department of labor and employment, ~~and referred to the controller for collection pursuant to section 8-79-102(2), C.R.S.~~

(II) Any ~~moneys~~ MONEY withheld for payment of child support debt or child support arrearages pursuant to ~~subparagraph (I) of this paragraph (a) shall be~~ SUBSECTION (3.5)(a)(I) OF THIS SECTION IS deposited with the state treasurer for disbursement by the department of human services. For all names and amounts certified by the department of human services pursuant to section 26-13-111, ~~C.R.S.~~, the controller shall provide to the department of human services the payees' names and associated amounts deposited with the state treasurer pursuant to this ~~subparagraph (II)~~ SUBSECTION (3.5)(a)(II) and any other identifying information as required by the department of human services.

(III) Any ~~moneys~~ MONEY withheld for payment of an unpaid balance of tax, interest, or other charges specified in ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (3.5)(a)(I) OF THIS SECTION and subject to offset under section 39-21-108 (3), ~~C.R.S.~~, ~~shall be~~ IS deposited with the state treasurer. For all names and amounts submitted by the executive director of the department of revenue pursuant to section 39-21-114 (10), ~~C.R.S.~~, the controller shall provide to ~~said~~ THE department the payees' names and associated amounts deposited with the state treasurer pursuant to this ~~subparagraph (III)~~ SUBSECTION (3.5)(a)(III).

(IV) Any ~~moneys~~ MONEY withheld for payment of an unpaid debt owing to the state pursuant to ~~subparagraph (I) of this paragraph (a) shall be~~ SUBSECTION (3.5)(a)(I) OF THIS SECTION IS deposited with the state treasurer. For all names and amounts certified by ~~the central collections unit~~ A STATE AGENCY pursuant to SUBSECTION (3.5)(a) OF this section, the controller shall provide to the ~~central collections unit~~ STATE AGENCY the payees' names and associated amounts deposited with the state treasurer pursuant to this ~~subparagraph (IV)~~ SUBSECTION (3.5)(a)(IV).

(V) All ~~moneys~~ MONEY withheld for payment of a student loan division debt pursuant to ~~subparagraph (I) of this paragraph (a) shall be~~

SUBSECTION (3.5)(a)(I) OF THIS SECTION IS deposited with the state treasurer for disbursement by the state treasurer to the division. For all names and amounts certified by the division pursuant to section 23-3.1-104 (1)(q), ~~C.R.S.~~, the controller shall provide to the division the payees' names and associated amounts deposited with the state treasurer pursuant to this ~~subparagraph (V)~~ SUBSECTION (3.5)(a)(V).

(VI) The controller shall deposit with the state treasurer any ~~moneys~~ MONEY withheld for payment of unemployment compensation debt pursuant to ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (3.5)(a)(I) OF THIS SECTION, and the state treasurer shall credit the ~~moneys~~ MONEY to the unemployment compensation fund. For all names and amounts certified by the division of unemployment insurance, ~~pursuant to section 8-79-102 (2), C.R.S.~~, the controller shall provide to the division the payees' names and associated amounts deposited with the state treasurer pursuant to this ~~subparagraph (VI)~~ SUBSECTION (3.5)(b)(VI).

(VII) THE CONTROLLER SHALL PAY any approved disbursement in excess of the unpaid balance or debt ~~shall be paid~~ to the approved payee.

(b) In the event that there are debts for unpaid child support, as set forth in section 26-13-111, ~~C.R.S.~~, debts for an unpaid balance of tax, interest, or other charges pursuant to article 21 of title 39, ~~C.R.S.~~, and other debts owing to the state or any agency thereof as set forth in ~~subparagraph (I) of paragraph (a) of this subsection (3.5)~~ SUBSECTION (3.5)(a)(I) OF THIS SECTION, the amount withheld pursuant to ~~subparagraph (I) of paragraph (a) of this subsection (3.5)~~ shall be SUBSECTION (3.5)(a)(I) OF THIS SECTION IS credited to the unpaid debts and ~~shall be~~ IS applied first to those unpaid debts in the order they appear in this ~~paragraph (b)~~ SUBSECTION (3.5)(b), and any remaining amounts ~~shall be prorated among other unpaid debts withheld pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5) on the basis of the ratio of the amount of each such remaining unpaid debt as compared to the total amount of the remaining unpaid debts~~ SUBSECTION (3.5)(a)(I) OF THIS SECTION IS APPLIED BASED ON THE PRIORITY DETERMINED BY THE CONTROLLER.

(c) ~~The controller shall charge for disbursements withheld pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5) and shall credit amounts so collected to the vendor offset implementation fund, which fund is hereby created in the state treasury. The amount of such charges shall be~~

~~negotiated by the controller with departments using the vendor offset intercept system.~~

(4) (Deleted by amendment, L. 99, p. 689, § 9, effective August 4, 1999.)

(5) ~~No contract for the collection of state debts under the provisions of this section shall be awarded for a term in excess of that permitted by the provisions of the "Procurement Code", articles 101 to 112 of this title.~~

(6) Any contract awarded to private counsel or private collection agency shall require that the ~~contractee~~ CONTRACTOR remain licensed under the ~~contractee's~~ CONTRACTOR'S respective occupational licensing statutes or rules during the term of the contract. The contract shall require that a private counsel or private collection agency shall at all times act in compliance with the provisions of the "Colorado Fair Debt Collection Practices Act", article 16 of title 5, and in compliance with any rules promulgated by the ~~executive director~~ CONTROLLER.

(7) ~~The controller shall establish specific performance policies and standards for measuring state agency performance in collecting debts due the state.~~

(8) (a) ~~The department of personnel may add a collection fee to the amount of a debt's principal and accruing interest referred to the state controller pursuant to this section except where other specific statutory authority, requirements under federal programs, or written agreement with the debtor provide otherwise. The department shall determine upon annual review the amount of the collection fee, which shall approximate the reasonable costs incurred by the controller in collecting debts. The collection fee may include a fee to recover the collection costs incurred by either the controller, private counsel, or private collection agencies, but in no case shall the aggregate fee for the controller or private collection agencies exceed eighteen percent and in no case shall the aggregate fee for private counsel exceed twenty-five percent. A COLLECTION FEE FOR A PRIVATE COLLECTION AGENCY SHALL NOT EXCEED EIGHTEEN PERCENT OF THE DEBT, AND THE FEE FOR PRIVATE COUNSEL SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE DEBT. ALL FEES COLLECTED AND RETAINED BY A PRIVATE COLLECTION AGENCY OR PRIVATE COUNSEL AS PAYMENT FOR SERVICES COLLECTING A DEBT THAT ARE NOT DEPOSITED IN THE STATE~~

TREASURY ARE NOT SUBJECT TO ARTICLE 36 OF TITLE 24 OR SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

(b) The debtor ~~shall be~~ IS liable for repayment of the total amount of a debt due to the state, including the collection fee CHARGED BY THE PRIVATE COLLECTION AGENCY OR PRIVATE COUNSEL, plus allowable fees and costs pursuant to ~~paragraph (c) of this subsection (8)~~ SUBSECTION (8)(c) OF THIS SECTION and the delinquency charge pursuant to section 24-79.5-102. ~~Any court-ordered award that is insufficient to cover the total amount outstanding shall be applied first to the principal amount owed, then to court costs, then to attorney fees, then to interest, and then to any delinquency charge.~~

(c) If ~~such~~ a debt due to the state is litigated and the state prevails, in addition to the collection fee, the debtor shall also be liable for the following:

(I) Reasonable attorney fees as may be determined by the court;

(II) Court costs as described in section 13-16-122; ~~C.R.S.~~; and

(III) Fees incurred by the state's attorney in processing the litigation and collection of any judgment.

(d) If ~~such~~ a debt due to the state is in the form of a check, draft, or order not paid upon presentment, ~~and referred to the department of personnel for collection,~~ the ~~department~~ STATE AGENCY is entitled, in addition to ~~the~~ A collection fee, IF APPLICABLE, to collect damages as specified in section 13-21-109 (1)(b)(II) and (2)(a). ~~C.R.S.~~

(9) ~~Except as provided in the "Colorado Fair Debt Collection Practices Act", article 16 of title 5, within five days after the initial communication with a debtor in connection with the collection of any debt, the controller, private counsel, or private collection agency shall, unless the information is contained in the initial communication or the debtor has paid the debt, send the debtor a written notice with the disclosures specified in subsections (9)(a) and (9)(b) of this section. If the disclosures are placed on the back of the notice, the front of the notice shall contain a statement notifying debtors of that fact. The disclosures shall state:~~

~~(a) The amount of the debt, including an itemization of any fees assessed as provided for in paragraph (a) of subsection (8) of this section; and~~

~~(b) The name of the creditor to whom the debt is owed.~~

~~(10) (a) Notwithstanding any other provision of law, and pursuant to 31 U.S.C. sec. 3716 (b) and (h)(1), the department of personnel, at the request of any executive, judicial, or legislative branch agency of the state, state-supported institution of higher education, or political subdivision of the state, may enter into a reciprocal agreement with the United States government to offset:~~

~~(I) The claim of any person against the state, including any state tax refund to which the person may be entitled, to any debt of the person owed to the United States government that the United States government has certified as final, due, and owing, with all appeals and legal actions having been waived or exhausted; and~~

~~(II) Any nontax claim of any person against the United States government to any liquidated debt of the person owed to the state. Any fees associated with any offset of federal moneys will be deducted by the United States government from the amount of moneys offset, which may then be added to the balance of the debt owed, but any fees associated with any offset of state moneys will not be charged to the United States government.~~

~~(b) Notwithstanding any other provision of law, the department of personnel, at the request of any executive, judicial, or legislative branch agency, state-supported institution of higher education, or political subdivision of the state, may enter into a reciprocal agreement with any state to offset:~~

~~(I) The claim of any person against the state to any debt of the person owed to any state that has certified the debt as final, due, and owing, with all appeals and legal actions having been waived or exhausted; and~~

~~(II) Any claim of any person against any state to any liquidated debt of the person owed to the state.~~

~~(c) If multiple creditors have certified liquidated debt against the~~

~~same person on a claim against the state pursuant to this section, the debts of the state, any state-supported institution of higher education, or any political subdivision of the state shall be credited first in the priority established in paragraph (b) of subsection (3.5) of this section, with the understanding that any state agency or state-supported institution of higher education debt will be paid first before any debt for a political subdivision of the state assigned to central collection services. If there is any balance due the claimant after settling the whole demands of the state, any executive, judicial, or legislative branch agency of the state, any state-supported institution of higher education, and any political subdivision of the state, the balance shall be credited to the liquidated debts certified by the United States government and then to the liquidated debts certified by any other state in the order in which the claims were filed with the state treasurer. If there is a balance due the claimant after satisfaction of all liquidated debts as itemized in this section and any court-ordered payments, the balance shall be paid to the claimant.~~

SECTION 2. In Colorado Revised Statutes, 1-45-111.7, amend (9)(a) as follows:

1-45-111.7. Campaign finance complaints - initial review - curing violations - investigation and enforcement - hearings - advisory opinions - document review - collection of debts resulting from campaign finance penalties - definitions. (9) Miscellaneous matters - debt collection - municipal complaints. (a) The secretary may send to the state controller for PURSUE collection OF any outstanding debt resulting from a campaign finance penalty that the secretary deems collectible.

SECTION 3. In Colorado Revised Statutes, 5-16-111.5, amend (3) as follows:

5-16-111.5. Fees, costs, and costs of collection - limitation. (3) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2023, and on or before January 1 every five years thereafter, the state auditor shall review the rate described in subsection (1) of this section and the aggregate fee described in section 24-30-202.4 (8)(a) and report the results of his or her review to the finance committees of the senate and the house of representatives or any successor committees. The report may include any recommendations of the state auditor regarding raising or lowering the rate or the aggregate fee.

SECTION 4. In Colorado Revised Statutes, 5-16-113, repeal (11)(b) as follows:

5-16-113. Civil liability. (11) (b) ~~If the state controller, or a person he or she designates to recover money owed to the state, fails to comply with any provision of this article 16, the controller, or his or her designee, shall be subject to disciplinary action as specified in the rules promulgated by the executive director of the department of personnel pursuant to article 4 of title 24.~~

SECTION 5. In Colorado Revised Statutes, 8-67-110, repeal (2) as follows:

8-67-110. Collection of benefit reimbursements. (2) ~~The board, in its role as guardian of fund dollars, is exempt from section 24-30-202.4. If the board determines an account to be uncollectible, the account may be referred to the controller for collection. Reasonable fees for collection, as determined by the board and the controller, shall be added to the amount of debt. The debtor is liable for repayment of the total of the amount of outstanding debt plus the collection fee. All money collected by the controller shall be returned to the fund; except that all fees collected shall be retained by the controller. If less than the full amount is collected, the controller shall retain only a proportionate share of the collection fee.~~

SECTION 6. In Colorado Revised Statutes, 8-79-102, repeal (2) as follows:

8-79-102. Collection of premiums and surcharges, benefit overpayments, penalties, and interest - rules. (2) ~~The division, in its role as guardian of unemployment insurance trust fund dollars, is exempt from the provisions of section 24-30-202.4, C.R.S. If the division determines an account to be uncollectible, such account may be referred to the controller for collection. Reasonable fees for collection, as determined by the director of the division and the controller, shall be added to the amount of debt. The debtor shall be liable for repayment of the total of the amount outstanding plus the collection fee. All money collected by the controller shall be returned to the division for credit to the fund; except that, all fees collected shall be retained by the controller. If less than the full amount is collected, the controller shall retain only a proportionate share of the collection fee.~~

SECTION 7. In Colorado Revised Statutes, **amend** 8-80-102 as follows:

8-80-102. Limitation of fees. No individual claiming benefits shall be charged fees of any kind in any proceeding under articles 70 to 82 of this title by the division or its representatives or by any court or any officer thereof; except that ~~the controller may charge a reasonable fee as provided in section 8-79-102 (2) for the recoupment of benefit overpayments, and~~ any party appealing the decision of a referee shall be assessed the actual costs of preparing a transcript according to rules promulgated by the director of the division except if the appellant is successful the cost of preparing the transcript will be refunded. Any person who violates this provision is guilty of a misdemeanor. Any individual claiming benefits in any proceeding before the division or a court may be represented by counsel. Unless approved by the division, no lien shall be allowed or suit brought for attorney fees, contingent or otherwise, for services rendered for the collection of any individual's claim for benefits.

SECTION 8. In Colorado Revised Statutes, **amend** 21-1-106 as follows:

21-1-106. Recoupment of fees and costs. In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant and shall notify the judicial district's collection investigator. ~~or the controller, who shall institute proceedings pursuant to section 24-30-202.4, C.R.S., as necessary to recover such fees or costs.~~

SECTION 9. In Colorado Revised Statutes, **amend** 21-2-106 as follows:

21-2-106. Recoupment of fees and costs. In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant and shall notify the judicial district's collection investigator. ~~or the controller, who shall institute proceedings pursuant to section 24-30-202.4, C.R.S., as necessary to recover such fees or costs.~~

SECTION 10. In Colorado Revised Statutes, 24-30-201, **amend** (1)(j) as follows:

24-30-201. Accounts and control - controller. (1) The powers, duties, and functions concerning accounts and control as set forth in this part 2 are the responsibility of the state controller. The executive director of the department of personnel shall appoint the controller, subject to section 13 of article XII of the state constitution. The controller must be bonded in such amount as the executive director shall fix. The powers and duties of the controller are:

(j) ~~Pursuant to rules and regulations promulgated by the executive director of the department of personnel, To assist state agencies in their efforts to recover moneys MONEY owing to the state; and to collect, on behalf of the state, accounts referred to the controller under rules and regulations authorizing such referral under defined circumstances, as further specified in section 24-30-202.4;~~

SECTION 11. In Colorado Revised Statutes, 24-30-202.7, **amend** (1)(b), (2), and (3) as follows:

24-30-202.7. Lottery winnings offset - definitions. (1) As used in this section, unless the context otherwise requires:

(b) "Outstanding debt" means any unpaid debt due to the state that is ~~referred pursuant to section 24-30-202.4 (2) to the state controller or the central collection services section of the division of finance and procurement, or any successor section, in the department of personnel,~~ CERTIFIED BY A STATE AGENCY PURSUANT TO SECTION 24-30-202.4 (2.5), including the collection fee and any allowable fees and costs pursuant to section 24-30-202.4 (8). "Outstanding debt" includes any debt collected by ~~the department of personnel for a political subdivision of the state under contract with central collection services, with the understanding that any state agency or state-supported institution of higher education debt will be paid before any debt for a political subdivision of the state assigned to central collection services.~~

(2) ~~Beginning January 1, 2012, the department of personnel shall periodically certify to~~ A STATE AGENCY SHALL PROVIDE to the department of revenue ~~information regarding debtors with an outstanding debt. Such~~

~~information shall include the social security number of the debtor, the amount of the debtor's outstanding debt, and any other identifying information required by the department of revenue.~~

(3) Upon receiving notification from the department of revenue that a lottery cash prize winner appears among those certified by ~~the department of personnel~~ A STATE AGENCY, the department of revenue shall notify the debtor, in writing, that the state intends to offset the debtor's outstanding debt against the debtor's winnings from the state lottery. ~~Such notification shall include information on the debtor's right to object to the offset and to request an administrative review pursuant to the rules of the department of personnel.~~

SECTION 12. In Colorado Revised Statutes, 24-50-142, **repeal** (1) as follows:

24-50-142. Repayment of debts to state-supported institutions of higher education by state employees. (1) ~~When a state employee has an outstanding obligation due to a state-supported institution of higher education, the board shall include provision for referral and collection of the loan or outstanding obligation to the controller pursuant to section 24-30-202.4.~~

SECTION 13. In Colorado Revised Statutes, 24-50.3-104, **amend** (3)(e); and **repeal** (2)(e) and (3)(f) as follows:

24-50.3-104. Powers and duties of executive director. (2) In addition to all other powers and duties conferred or imposed upon the executive director by this article or any other law, the executive director shall:

(e) ~~Review the accounts of all state agencies with respect to the status of debts owed to the state through any agency, other than taxes recoverable by the department of revenue, and devise methods to increase the efficiency of the agencies and the controller in the collection of such debts;~~

(3) In order to perform these duties, the executive director shall have the power to:

(e) After consultation with other state agencies, promulgate rules and regulations which set out the methods to be employed by state agencies in the collection of debts due the state. Rules and regulations shall be uniform wherever possible for all state agencies and shall include such things as the classification of debts by type, amount, time status as to delinquency, circumstances of debtor, possibility of error, and any other method of classification which aids an agency in efficient efforts to recover amounts due the state. ~~Such rules and regulations shall also specify the requirements for a debt to be classified as "referable to controller" for further collection.~~

(f) ~~Promulgate rules and regulations for the controller in the collection of debts referred to that office, including such matters as referrals to collection agencies or practicing attorneys for out-of-state collection of debts; authority to write off, release, or compromise debts; authorization of suit filings; and methods of collection of judgments;~~

SECTION 14. In Colorado Revised Statutes, 25.5-4-301, **repeal** (2)(d) as follows:

25.5-4-301. Recoveries - overpayments - penalties - interest - adjustments - liens - review or audit procedures. (2) Any overpayment to a provider, including those of personal needs funds made pursuant to section 25.5-6-206, are recoverable regardless of whether the overpayment is the result of an error by the state department, a county department of human or social services, an entity acting on behalf of either department, or by the provider or any agent of the provider as follows:

(d) ~~Notwithstanding the provisions of section 24-30-202.4, C.R.S., an amount specified in paragraph (a) of this subsection (2) that the state department has determined to be uncollectible may be referred to the controller for collection. Net proceeds of debts collected by the controller pursuant to this paragraph (d) shall be paid into the fund from which the overpayment was made.~~

SECTION 15. In Colorado Revised Statutes, 39-21-108, **amend** (3)(a)(I)(A) and (3)(a)(V) as follows:

39-21-108. Refunds. (3) (a) (I) (A) Whenever it is established that any taxpayer has, for any period open under the statutes, overpaid a tax

covered by articles 22 and 26 to 29 of this ~~title~~ TITLE 39, article 60 of title 34, ~~C.R.S.~~, and article 3 of title 42 ~~C.R.S.~~, and that: There is an unpaid balance of tax and interest accrued, according to the records of the executive director, owing by such taxpayer for any other period; there is an amount required to be repaid to the unemployment compensation fund pursuant to section 8-81-101 (4), ~~C.R.S.~~, the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment by the division of unemployment insurance in the department of labor and employment; there is any unpaid child support debt as set forth in section 14-14-104, ~~C.R.S.~~, or child support arrearages that are the subject of enforcement services provided pursuant to section 26-13-106, ~~C.R.S.~~, as certified by the department of human services; there are any unpaid obligations owing to the state as set forth in section 26-2-133, ~~C.R.S.~~, for overpayment of public assistance or medical assistance benefits, the amount of which has been determined to be owing as a result of final agency determination or judicial decision or that has been reduced to judgment, as certified by the department of human services; there is any unpaid loan or other obligation due to a state-supported institution of higher education as set forth in section 23-5-115, ~~C.R.S.~~, the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment, as certified by the appropriate institution; there is any unpaid loan due to the student loan division of the department of higher education as set forth in section 23-3.1-104 (1)(p), ~~C.R.S.~~, the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment, as certified by the division; there is any unpaid loan due to the collegeinvest division of the department of higher education as set forth in section 23-3.1-206, ~~C.R.S.~~, the amount of which has been determined to be owing as a result of a final agency determination or judicial decision or that has been reduced to judgment; there is any outstanding judicial fine, fee, cost, or surcharge as set forth in section 16-11-101.8, ~~C.R.S.~~, or judicial restitution as set forth in section 16-18.5-106.8, ~~C.R.S.~~, the amount of which has been determined to be owing as a result of a final judicial department determination or certified by the judicial department as a judgment owed the state or a victim; there is any unpaid debt owing to the state or any agency thereof by such taxpayer, and that is found to be owing as a result of a final agency determination or the amount of which has been reduced to judgment and as certified by the ~~controller~~ STATE AGENCY; or the taxpayer is a qualified individual identified pursuant to section 39-22-120

(10) or 39-22-2003 (9), so much of the overpayment of tax plus interest allowable thereon as does not exceed the amount of such unpaid balance or unpaid debt must be credited first to the unpaid balance of tax and interest accrued and then to the unpaid debt, and any excess of the overpayment must be refunded. If the taxpayer elects to designate his or her refund as a credit against a subsequent year's tax liability, the amount allowed to be so credited must be reduced first by the unpaid balance of tax and interest accrued and then by the unpaid debt. If the taxpayer filed a joint return, the executive director shall notify the other taxpayer named on the joint return that the portion of the overpayment that is generated by the other taxpayer's income will be refunded upon receipt of a request detailing said amount. ~~As used in this section, unless the context otherwise requires, "agency" includes a state-supported institution of higher education or a political subdivision of the state under contract with central collection services.~~

(V) Any ~~moneys~~ MONEY withheld for payment of an unpaid debt owing to the state pursuant to this subsection (3) shall be deposited with the state treasurer for disbursement by the controller. For each person whose name and amount is certified by ~~the controller~~ A STATE AGENCY pursuant to section 24-30-202.4, ~~C.R.S.~~, the executive director of the department of revenue shall provide to the controller the name, address, and social security number or federal employer identification number, whichever is applicable, of the taxpayer whose refund is being offset, the amount of the offset, and any other identifying information as required by the controller.

SECTION 16. In Colorado Revised Statutes, 39-21-112, add (10) as follows:

39-21-112. Duties and powers of executive director. (10)(a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND PURSUANT TO 26 U.S.C. 6402 AND 31 U.S.C. 3716 (b) AND (h)(1), OR ANY SUCCESSOR SECTIONS, THE EXECUTIVE DIRECTOR MAY ENTER INTO A RECIPROCAL AGREEMENT WITH THE UNITED STATES GOVERNMENT TO OFFSET:

(I) THE CLAIM OF ANY PERSON AGAINST THE STATE, INCLUDING ANY STATE TAX OVERPAYMENT TO WHICH THE PERSON MAY BE ENTITLED, TO ANY DEBT OF THE PERSON OWED TO THE UNITED STATES GOVERNMENT THAT THE UNITED STATES GOVERNMENT HAS CERTIFIED AS FINAL, DUE, AND OWING, WITH ALL APPEALS AND LEGAL ACTIONS HAVING BEEN WAIVED OR EXHAUSTED; AND

(II) ANY CLAIM OF ANY PERSON AGAINST THE UNITED STATES GOVERNMENT TO ANY LIQUIDATED DEBT OF THE PERSON OWED TO THE STATE. ANY FEES ASSOCIATED WITH ANY OFFSET OF FEDERAL MONEY WILL BE DEDUCTED BY THE UNITED STATES GOVERNMENT FROM THE AMOUNT OF MONEY OFFSET, WHICH MAY THEN BE ADDED TO THE BALANCE OF THE DEBT OWED, BUT ANY FEES ASSOCIATED WITH ANY OFFSET OF STATE MONEY WILL NOT BE CHARGED TO THE UNITED STATES GOVERNMENT.

(b) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE EXECUTIVE DIRECTOR MAY ENTER INTO A RECIPROCAL AGREEMENT WITH ANY STATE TO OFFSET:

(I) THE CLAIM OF ANY PERSON AGAINST THE STATE TO ANY DEBT OF THE PERSON OWED TO ANY STATE THAT HAS CERTIFIED THE DEBT AS FINAL, DUE, AND OWING, WITH ALL APPEALS AND LEGAL ACTIONS HAVING BEEN WAIVED OR EXHAUSTED; AND

(II) ANY CLAIM OF ANY PERSON AGAINST ANY STATE TO ANY LIQUIDATED DEBT OF THE PERSON OWED TO THE STATE.

SECTION 17. In Colorado Revised Statutes, 44-33-103, **amend** (2)(a)(III) as follows:

44-33-103. Definitions. As used in this article 33, unless the context otherwise requires:

(2) (a) "Outstanding debt" means:

(III) Any unpaid debt due to the state that is ~~referred pursuant to section 24-30-202.4 (2) to the state controller or the central collection services section of the division of finance and procurement, or any successor section, in the department of personnel, and~~ CERTIFIED BY A STATE AGENCY PURSUANT TO SECTION 24-30-202.4 (2.5), including the collection fee and any allowable fees and costs pursuant to section 24-30-202.4 (8). ~~"Outstanding debt" does not include any debt collected by the department of personnel for a political subdivision of the state.~~

SECTION 18. In Colorado Revised Statutes, 44-33-104, **amend** (4) and (5) as follows:

44-33-104. Registry - creation - information. (4) On and after ~~January 1, 2012~~ JANUARY 1, 2021, the ~~department of personnel~~ STATE AGENCIES shall certify to the registry operator the information indicated in subsection (6) of this section regarding each person with an outstanding debt as specified in section 44-33-103 (2)(a)(III).

(5) The registry operator shall enter in the registry the information certified to the registry operator by the judicial department, the department of human services, and ~~the department of personnel~~ A STATE AGENCY pursuant to subsections (2), (3), and (4) of this section.

SECTION 19. In Colorado Revised Statutes, 44-33-105, **amend** (2)(b)(IV)(C) and (2)(b)(V) as follows:

44-33-105. Payments - limited gaming and pari-mutuel wagering licensees - procedures. (2) (b) If the registry operator replies that the winner is listed in the registry:

(IV) The registry operator shall send to the certifying department the money and information received from a licensee pursuant to subsection (2)(b)(III) of this section. If more than one department certified a winner, the registry operator shall send the information to each certifying department and distribute the money among the departments as follows:

(C) Of any money remaining after the distribution, if any, to the judicial department pursuant to subsection (2)(b)(IV)(B) of this section, the registry operator shall send to the department of ~~personnel~~ REVENUE any amount certified by ~~the department of personnel~~ A STATE AGENCY IN ACCORDANCE WITH SECTION 24-30-204.2 (2.5).

(V) The department of human services shall process money received from the registry operator pursuant to subsection (2)(b)(IV) of this section in accordance with section 26-13-118.7. The judicial department shall process money received from the registry operator pursuant to subsection (2)(b)(IV) of this section in accordance with the rules of the department of revenue. The department of ~~personnel~~ REVENUE shall process money received from the registry operator pursuant to subsection (2)(b)(IV) of this section in accordance with the rules of the department of ~~personnel~~, ~~with the understanding that any state agency or state-supported institution of higher education debt will be paid before any debt for a political subdivision of the~~

~~state assigned to central collection services~~ REVENUE.

ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM				
		GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$

SECTION 20. Appropriation to the department of personnel for the fiscal year beginning July 1, 2020. In Session Laws of Colorado 2020, section 2 of chapter 326, (HB 20-1360), amend Part XV (5)(A)(2), and the affected totals, as follows:

Section 2. **Appropriation.**

**PART XV
DEPARTMENT OF PERSONNEL**

(5) DIVISION OF ACCOUNTS AND CONTROL

(A) Financial Operations and Reporting

(2) Collections Services

Personal Services	358,701				
	77,768				
	(4.3 FTE)				
	(0.6 FTE)				
Operating Expenses	220,000				
	30,455				
Private Collection Agency Fees	900,000				
Indirect Cost Assessment	188,776				
	<u>1,667,477</u>			<u>1,667,477^a</u>	
	296,999			296,999 ^a	

^a This amount shall be from the Debt Collection Fund created in Section 24-30-202.4 (3)(e), C.R.S. The amount is from collection fees.

TOTALS PART XV

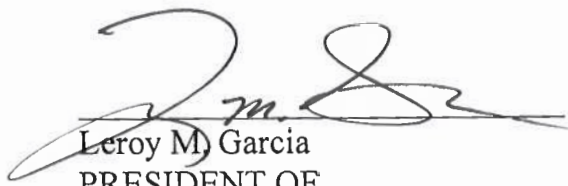
(PERSONNEL)	\$209,825,100	\$14,876,401	\$13,025,558 ^a	\$181,923,141 ^b
	<u>\$208,454,622</u>		<u>\$11,655,080^a</u>	

^a Of this amount, \$1,848,255 contains an (I) notation.

^b Of this amount, \$59,943,533 contains an (I) notation.

SECTION 21. Appropriation. For the 2021-22 state fiscal year, \$50,625 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation for tax administration IT system (GenTax) support.

SECTION 22. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.



Leroy M. Garcia
PRESIDENT OF
THE SENATE



Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Cindi L. Markwell
SECRETARY OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED March 21, 2021 at 10:20 am
(Date and Time)


Jared S. Polis

GOVERNOR OF THE STATE OF COLORADO