

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
6.2.20

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LLS NO. 20-1301.01 Esther van Mourik x4215

COMMITTEE BILL

Capital Development Committee

BILL TOPIC: "Lease-purchase Issuance For Capital Construction"

A BILL FOR AN ACT

101 **CONCERNING THE ISSUANCE OF A LEASE-PURCHASE AGREEMENT TO**
102 **FUND THE CONTINUATIONS OF CERTAIN PREVIOUSLY FUNDED**
103 **CAPITAL CONSTRUCTION PROJECTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Capital Development Committee. The bill requires the state treasurer, on behalf of the state, to execute a lease-purchase agreement in an amount up to \$65,500,000 plus reasonable and necessary costs to fund certain capital construction needs for state institutions of higher education that are continuations of previously funded projects as specified by the

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

capital development committee. The capital development committee is required to post the list of specific projects and the cost of each project on its official website no later than August 15, 2020. The capital development committee is also required to specify in this list, in the event of any excess money as a result of the issuance, what any remainder money must be used for.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-82-803 as
3 follows:

4 **24-82-803. Lease-purchase agreements for certain capital**
5 **construction projects.** (1) (a) NOTWITHSTANDING THE PROVISIONS OF
6 SECTIONS 24-82-102 (1)(b) AND 24-82-801, AND PURSUANT TO SECTION
7 24-36-121, NO LATER THAN JUNE 30, 2021, THE STATE, ACTING BY AND
8 THROUGH THE STATE TREASURER, SHALL EXECUTE A LEASE-PURCHASE
9 AGREEMENT FOR THE PURPOSE DESCRIBED IN SUBSECTION (3) OF THIS
10 SECTION IN AN AMOUNT UP TO SIXTY-FIVE MILLION FIVE HUNDRED
11 THOUSAND DOLLARS PLUS REASONABLE AND NECESSARY
12 ADMINISTRATIVE, MONITORING, AND CLOSING COSTS AND INTEREST,
13 INCLUDING CAPITALIZED INTEREST AND CREDIT ENHANCEMENT COSTS
14 SUCH AS A DEBT SERVICE RESERVE FUND OR BOND INSURANCE.

15 (b) THE ANTICIPATED ANNUAL STATE-FUNDED PAYMENTS FOR THE
16 PRINCIPAL AND INTEREST COMPONENTS OF THE AMOUNT PAYABLE UNDER
17 THE LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO
18 SUBSECTION (1)(a) OF THIS SECTION SHALL NOT EXCEED FIVE MILLION FIVE
19 HUNDRED THOUSAND DOLLARS.

20 (c) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER,
21 AT THE STATE TREASURER'S SOLE DISCRETION, MAY ENTER INTO THE
22 LEASE-PURCHASE AGREEMENT AUTHORIZED BY SUBSECTION (1)(a) OF THIS

1 SECTION WITH ANY FOR-PROFIT OR NONPROFIT CORPORATION, TRUST, OR
2 COMMERCIAL BANK AS A TRUSTEE AS THE LESSOR.

3 (d) THE LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED BY
4 SUBSECTION (1)(a) OF THIS SECTION SHALL PROVIDE THAT ALL OF THE
5 OBLIGATIONS OF THE STATE UNDER THE AGREEMENT ARE SUBJECT TO THE
6 ACTION OF THE GENERAL ASSEMBLY IN ANNUALLY MAKING MONEY
7 AVAILABLE FOR ALL PAYMENTS THEREUNDER. PAYMENTS UNDER ANY
8 LEASE-PURCHASE AGREEMENT MUST BE MADE SUBJECT TO ANNUAL
9 APPROPRIATION BY THE GENERAL ASSEMBLY, AS APPLICABLE, FROM THE
10 CAPITAL CONSTRUCTION FUND, FROM THE GENERAL FUND, OR FROM ANY
11 OTHER LEGALLY AVAILABLE SOURCE OF MONEY.

12 (e) THE AGREEMENT MUST ALSO PROVIDE THAT THE STATE'S
13 OBLIGATION DOES NOT CREATE STATE DEBT WITHIN THE MEANING OF ANY
14 PROVISION OF THE STATE CONSTITUTION OR STATE LAW CONCERNING OR
15 LIMITING THE CREATION OF STATE DEBT AND IS NOT A MULTIPLE
16 FISCAL-YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION
17 OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF
18 THE STATE CONSTITUTION. IF THE STATE DOES NOT RENEW THE
19 LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED BY SUBSECTION
20 (1)(a) OF THIS SECTION, THE SOLE SECURITY AVAILABLE TO THE LESSOR IS
21 THE PROPERTY THAT IS THE SUBJECT OF THE NONRENEWED
22 LEASE-PURCHASE AGREEMENT.

23 (f) (I) THE LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED
24 BY SUBSECTION (1)(a) OF THIS SECTION MAY CONTAIN SUCH TERMS,
25 PROVISIONS, AND CONDITIONS AS THE STATE TREASURER, ACTING ON
26 BEHALF OF THE STATE, DEEMS APPROPRIATE, INCLUDING ALL OPTIONAL
27 TERMS; EXCEPT THAT THE LEASE-PURCHASE AGREEMENT MUST

1 SPECIFICALLY AUTHORIZE THE STATE OR THE GOVERNING BOARD OF THE
2 APPLICABLE STATE INSTITUTION OF HIGHER EDUCATION TO RECEIVE FEE
3 TITLE TO ALL REAL AND PERSONAL PROPERTY THAT IS THE SUBJECT OF THE
4 LEASE-PURCHASE AGREEMENT ON OR BEFORE THE EXPIRATION OF THE
5 TERMS OF THE AGREEMENT.

6 (II) THE STATE TREASURER, ACTING ON BEHALF OF THE STATE, HAS
7 THE AUTHORITY AS HE OR SHE DEEMS APPROPRIATE, TO DETERMINE WHAT
8 COLLATERAL TO USE FOR THE LEASE-PURCHASE AGREEMENT.

9 (g) THE LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED BY
10 SUBSECTION (1)(a) OF THIS SECTION MAY PROVIDE FOR THE ISSUANCE,
11 DISTRIBUTION, AND SALE OF INSTRUMENTS EVIDENCING RIGHTS TO
12 RECEIVE RENTALS AND OTHER PAYMENTS MADE AND TO BE MADE UNDER
13 THE LEASE-PURCHASE AGREEMENT. THE INSTRUMENT MAY BE ISSUED,
14 DISTRIBUTED, OR SOLD ONLY BY THE LESSOR OR ANY PERSON DESIGNATED
15 BY THE LESSOR AND NOT BY THE STATE. THE INSTRUMENT DOES NOT
16 CREATE A RELATIONSHIP BETWEEN THE PURCHASERS OF THE INSTRUMENT
17 AND THE STATE OR CREATE ANY OBLIGATION ON THE PART OF THE STATE
18 TO THE PURCHASERS. THE INSTRUMENT IS NOT A NOTE, BOND, OR ANY
19 OTHER EVIDENCE OF STATE DEBT WITHIN THE MEANING OF ANY PROVISION
20 OF THE STATE CONSTITUTION OR STATE LAW CONCERNING OR LIMITING
21 THE CREATION OF STATE DEBT AND IS NOT A MULTIPLE FISCAL-YEAR
22 DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE
23 STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE
24 STATE CONSTITUTION.

25 (h) INTEREST PAID UNDER A LEASE-PURCHASE AGREEMENT
26 AUTHORIZED PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION,
27 INCLUDING INTEREST REPRESENTED BY THE INSTRUMENTS, IS EXEMPT

1 FROM COLORADO INCOME TAX.

2 (i) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER
3 AND THE GOVERNING BOARDS OF THE INSTITUTIONS OF HIGHER
4 EDUCATION, IS AUTHORIZED TO ENTER INTO ANCILLARY AGREEMENTS AND
5 INSTRUMENTS THAT ARE NECESSARY OR APPROPRIATE IN CONNECTION
6 WITH A LEASE-PURCHASE AGREEMENT, INCLUDING BUT NOT LIMITED TO
7 DEEDS, GROUND LEASES, SUB-LEASES, EASEMENTS, OR OTHER
8 INSTRUMENTS RELATING TO THE REAL PROPERTY ON WHICH THE FACILITIES
9 ARE LOCATED.

10 (j) THE PROVISIONS OF SECTION 24-30-202 (5)(b) DO NOT APPLY TO
11 A LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED BY OR TO ANY
12 ANCILLARY AGREEMENT OR INSTRUMENT ENTERED INTO PURSUANT TO
13 THIS SUBSECTION (1). THE STATE CONTROLLER OR HIS OR HER DESIGNEE
14 SHALL WAIVE ANY PROVISION OF THE FISCAL RULES PROMULGATED
15 PURSUANT TO SECTION 24-30-202 (1) AND (13) THAT THE STATE
16 CONTROLLER FINDS INCOMPATIBLE OR INAPPLICABLE WITH RESPECT TO A
17 LEASE-PURCHASE AGREEMENT OR AN ANCILLARY AGREEMENT OR
18 INSTRUMENT.

19 (2) (a) BEFORE EXECUTING THE LEASE-PURCHASE AGREEMENT
20 REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION, IN ORDER TO PROTECT
21 AGAINST FUTURE INTEREST RATE INCREASES, THE STATE, ACTING BY AND
22 THROUGH THE STATE TREASURER AND AT THE DISCRETION OF THE STATE
23 TREASURER, MAY ENTER INTO AN INTEREST RATE EXCHANGE AGREEMENT
24 PURSUANT TO ARTICLE 59.3 OF TITLE 11. A LEASE-PURCHASE AGREEMENT
25 EXECUTED AS REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION IS A
26 PROPOSED PUBLIC SECURITY FOR THE PURPOSES OF ARTICLE 59.3 OF TITLE
27 11. ANY PAYMENTS MADE BY THE STATE UNDER AN AGREEMENT ENTERED

1 INTO PURSUANT TO THIS SUBSECTION (2) MUST BE MADE SOLELY FROM
2 MONEY MADE AVAILABLE TO THE STATE TREASURER FROM THE EXECUTION
3 OF A LEASE-PURCHASE AGREEMENT OR FROM MONEY DESCRIBED IN
4 SUBSECTIONS (1)(d) OF THIS SECTION.

5 (b) AN AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION
6 (2) MUST ALSO PROVIDE THAT THE OBLIGATIONS OF THE STATE DO NOT
7 CREATE STATE DEBT WITHIN THE MEANING OF ANY PROVISION OF THE
8 STATE CONSTITUTION OR STATE LAW CONCERNING OR LIMITING THE
9 CREATION OF STATE DEBT ~~AND IS NOT A~~ OR ANY MULTIPLE FISCAL-YEAR
10 DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE
11 STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE
12 STATE CONSTITUTION.

13 (c) ANY MONEY RECEIVED BY THE STATE UNDER AN AGREEMENT
14 ENTERED INTO PURSUANT TO THIS SUBSECTION (2) SHALL BE USED TO
15 MAKE PAYMENTS ON LEASE-PURCHASE AGREEMENTS ENTERED INTO
16 PURSUANT TO SUBSECTION (1) OF THIS SECTION OR TO PAY THE COSTS OF
17 THE PROJECT FOR WHICH A LEASE-PURCHASE AGREEMENT WAS EXECUTED.

18 (3) THE PROCEEDS OF THE LEASE-PURCHASE AGREEMENT
19 EXECUTED AS REQUIRED BY SUBSECTION (1)(a) OF THIS SECTION SHALL BE
20 USED TO FUND CERTAIN CAPITAL CONSTRUCTION NEEDS FOR STATE
21 INSTITUTIONS OF HIGHER EDUCATION THAT ARE CONTINUATIONS OF
22 PREVIOUSLY FUNDED PROJECTS AS SPECIFIED BY THE CAPITAL
23 DEVELOPMENT COMMITTEE. THE CAPITAL DEVELOPMENT COMMITTEE
24 SHALL POST THE LIST OF SPECIFIC PROJECTS AND THE COST OF EACH
25 PROJECT, ON ITS OFFICIAL WEBSITE NO LATER THAN AUGUST 15, 2020. IN
26 THE EVENT OF ANY EXCESS MONEY AS A RESULT OF THE ISSUANCE, THE
27 CAPITAL DEVELOPMENT COMMITTEE SHALL ALSO SPECIFY IN THEIR LIST

1 WHAT ANY REMAINDER MONEY MUST BE USED FOR.

2 **SECTION 2. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, or safety.