SENATE BILL 20-219

CONCERNING THE ISSUANCE OF A LEASE-PURCHASE AGREEMENT TO FUND THE CONTINUATIONS OF CERTAIN PREVIOUSLY FUNDED 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 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.

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

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

24-82-803. Lease-purchase agreements for certain capital construction projects - legislative declaration. (1) (a) The general assembly hereby finds and declares that:

(I) Given the unprecedented economic situation in which the state finds itself because of the declared disaster emergency due to the COVID-19 pandemic, it is important for the general assembly to consider any option available to fund the continuations of certain previously funded capital construction projects;

(II) Funding the continuations of certain previously funded capital construction projects is particularly important because there are cost escalations due to construction inflation when a project is postponed, there are repair, maintenance, and upkeep costs to minimize damage to the ongoing project or existing infrastructure while funding is delayed, and there may be increased operational costs for any project continuation alternatives; and

(III) In addition, funding the continuations of certain previously funded capital construction projects in a time of
ECONOMIC DOWNTURN HELPS BOOST LOCAL ECONOMIES WITH CONSTRUCTION PROJECTS THAT CAN COMMENCE QUICKLY WHEN MONEY IS MADE AVAILABLE.

(b) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(I) THE DEADLINE TO ISSUE THE LEASE-PURCHASE AGREEMENT IN SUBSECTION (2)(a) OF THIS SECTION IS MEANT TO PROVIDE THE STATE TREASURER WITH AS MUCH FLEXIBILITY AS POSSIBLE TO ENSURE THAT THE LEASE-PURCHASE AGREEMENT IS EXECUTED ON BEHALF OF THE STATE WITH THE MOST FAVORABLE TERMS THAT THE MARKET WILL ALLOW. THE GENERAL ASSEMBLY AGREES WITH THE NEED FOR THIS DEADLINE FLEXIBILITY AND AT THE SAME TIME DECLARES THAT THE LEASE-PURCHASE AGREEMENT SHOULD BE EXECUTED AS SOON AS POSSIBLE.

(II) IF THERE IS ANY EXCESS MONEY AS A RESULT OF THE ISSUANCE, IT IS THE GENERAL ASSEMBLY’S INTENT THAT THE REMAINDER BE CREDITED TO THE EMERGENCY CONTROLLED MAINTENANCE ACCOUNT CREATED IN SECTION 24-75-302 (3.2).

(2) (a) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 24-82-102 (1)(b) AND 24-82-801, AND PURSUANT TO SECTION 24-36-121, NO LATER THAN JUNE 30, 2021, THE STATE, ACTING BY AND THROUGH THE STATE TREASURER, SHALL EXECUTE A LEASE-PURCHASE AGREEMENT FOR THE PURPOSE DESCRIBED IN SUBSECTION (4) OF THIS SECTION IN AN AMOUNT UP TO SIXTY-FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS PLUS REASONABLE AND NECESSARY ADMINISTRATIVE, MONITORING, AND CLOSING COSTS AND INTEREST, INCLUDING CAPITALIZED INTEREST AND CREDIT ENHANCEMENT COSTS SUCH AS A DEBT SERVICE RESERVE FUND OR BOND INSURANCE.
(b) The anticipated annual state-funded payments for the principal and interest components of the amount payable under the lease-purchase agreement entered into pursuant to subsection (2)(a) of this section shall not exceed five million five hundred thousand dollars.

(c) The state, acting by and through the state treasurer, at the state treasurer's sole discretion, may enter into the lease-purchase agreement authorized by subsection (2)(a) of this section with any for-profit or nonprofit corporation, trust, or commercial bank as a trustee as the lessor.

(d) The lease-purchase agreement executed as required by subsection (2)(a) of this section shall provide that all of the obligations of the state under the agreement are subject to the action of the general assembly in annually making money available for all payments thereunder. Payments under any lease-purchase agreement must be made subject to annual appropriation by the general assembly, as applicable, from the capital construction fund, from the general fund, or from any other legally available source of money.

(e) The agreement must also provide that the state's obligation does not create state debt within the meaning of any provision of the state constitution or state law concerning or limiting the creation of state debt and is not a multiple fiscal-year direct or indirect debt or other financial obligation of the state within the meaning of section 20 (4) of article X of the state constitution. If the state does not renew the lease-purchase agreement executed as required by subsection
(2)(a) OF THIS SECTION, THE SOLE SECURITY AVAILABLE TO THE LESSOR IS
THE PROPERTY THAT IS THE SUBJECT OF THE NONRENEWED
LEASE-PURCHASE AGREEMENT.

(f) (I) THE LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED
BY SUBSECTION (2)(a) OF THIS SECTION MAY CONTAIN SUCH TERMS,
PROVISIONS, AND CONDITIONS AS THE STATE TREASURER, ACTING ON
BEHALF OF THE STATE, DEEMS APPROPRIATE, INCLUDING ALL OPTIONAL
TERMS; EXCEPT THAT THE LEASE-PURCHASE AGREEMENT MUST
SPECIFICALLY AUTHORIZE THE STATE OR THE GOVERNING BOARD OF THE
APPLICABLE STATE INSTITUTION OF HIGHER EDUCATION TO RECEIVE FEE
TITLE TO ALL REAL AND PERSONAL PROPERTY THAT IS THE SUBJECT OF THE
LEASE-PURCHASE AGREEMENT ON OR BEFORE THE EXPIRATION OF THE
TERMS OF THE AGREEMENT.

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

(g) THE LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED BY
SUBSECTION (2)(a) OF THIS SECTION MAY PROVIDE FOR THE ISSUANCE,
DISTRIBUTION, AND SALE OF INSTRUMENTS EVIDENCING RIGHTS TO
RECEIVE RENTALS AND OTHER PAYMENTS MADE AND TO BE MADE UNDER
THE LEASE-PURCHASE AGREEMENT. THE INSTRUMENT MAY BE ISSUED,
DISTRIBUTED, OR SOLD ONLY BY THE LESSOR OR ANY PERSON DESIGNATED
BY THE LESSOR AND NOT BY THE STATE. THE INSTRUMENT DOES NOT
CREATE A RELATIONSHIP BETWEEN THE PURCHASERS OF THE INSTRUMENT
AND THE STATE OR CREATE ANY OBLIGATION ON THE PART OF THE STATE
TO THE PURCHASERS. THE INSTRUMENT IS NOT A NOTE, BOND, OR ANY
OTHER EVIDENCE OF STATE DEBT WITHIN THE MEANING OF ANY PROVISION
OF THE STATE CONSTITUTION OR STATE LAW CONCERNING OR LIMITING
THE CREATION OF STATE DEBT AND IS NOT A MULTIPLE FISCAL-YEAR
DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE
STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE
STATE CONSTITUTION.

(h) INTEREST PAID UNDER A LEASE-PURCHASE AGREEMENT
AUTHORIZED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION,
INCLUDING INTEREST REPRESENTED BY THE INSTRUMENTS, IS EXEMPT
FROM COLORADO INCOME TAX.

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

(j) THE PROVISIONS OF SECTION 24-30-202 (5)(b) DO NOT APPLY
TO A LEASE-PURCHASE AGREEMENT EXECUTED AS REQUIRED BY OR TO
ANY ANCILLARY AGREEMENT OR INSTRUMENT ENTERED INTO PURSUANT
TO THIS SUBSECTION (2). THE STATE CONTROLLER OR HIS OR HER
DESIGNEE SHALL WAIVE ANY PROVISION OF THE FISCAL RULES
PROMULGATED PURSUANT TO SECTION 24-30-202 (1) AND (13) THAT THE
STATE CONTROLLER FINDS INCOMPATIBLE OR INAPPLICABLE WITH RESPECT
TO A LEASE-PURCHASE AGREEMENT OR AN ANCILLARY AGREEMENT OR
INSTRUMENT.

(3) (a) BEFORE EXECUTING THE LEASE-PURCHASE AGREEMENT
REQUIRED BY SUBSECTION (2)(a) OF THIS SECTION, IN ORDER TO PROTECT
AGAINST FUTURE INTEREST RATE INCREASES, THE STATE, ACTING BY AND
THROUGH THE STATE TREASURER AND AT THE DISCRETION OF THE STATE
TREASURER, MAY ENTER INTO AN INTEREST RATE EXCHANGE AGREEMENT
PURSUANT TO ARTICLE 59.3 OF TITLE 11. A LEASE-PURCHASE AGREEMENT
EXECUTED AS REQUIRED BY SUBSECTION (2)(a) OF THIS SECTION IS A
PROPOSED PUBLIC SECURITY FOR THE PURPOSES OF ARTICLE 59.3 OF TITLE
11. ANY PAYMENTS MADE BY THE STATE UNDER AN AGREEMENT ENTERED
INTO PURSUANT TO THIS SUBSECTION (3) MUST BE MADE SOLELY FROM
MONEY MADE AVAILABLE TO THE STATE TREASURER FROM THE EXECUTION
OF A LEASE-PURCHASE AGREEMENT OR FROM MONEY DESCRIBED IN
SUBSECTION (2)(d) OF THIS SECTION.

(b) AN AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION
(3) MUST ALSO PROVIDE THAT THE OBLIGATIONS OF THE STATE DO NOT
CREATE STATE DEBT WITHIN THE MEANING OF ANY PROVISION OF THE
STATE CONSTITUTION OR STATE LAW CONCERNING OR LIMITING THE
CREATION OF STATE DEBT OR ANY MULTIPLE FISCAL-YEAR DIRECT OR
INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE STATE WITHIN
THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE STATE
CONSTITUTION.

(c) ANY MONEY RECEIVED BY THE STATE UNDER AN AGREEMENT
ENTERED INTO PURSUANT TO THIS SUBSECTION (3) SHALL BE USED TO
MAKE PAYMENTS ON THE LEASE-PURCHASE AGREEMENT ENTERED INTO
PURSUANT TO SUBSECTION (2) OF THIS SECTION OR TO PAY THE COSTS OF
THE PROJECTS FOR WHICH A LEASE-PURCHASE AGREEMENT WAS
EXECUTED.

(4) THE PROCEEDS OF THE LEASE-PURCHASE AGREEMENT
EXECUTED AS REQUIRED BY SUBSECTION (2)(a) OF THIS SECTION SHALL BE
USED TO FUND CERTAIN CAPITAL CONSTRUCTION NEEDS FOR STATE
INSTITUTIONS OF HIGHER EDUCATION THAT ARE CONTINUATIONS OF
PREVIOUSLY FUNDED PROJECTS AS SPECIFIED BY THE CAPITAL
DEVELOPMENT COMMITTEE. THE CAPITAL DEVELOPMENT COMMITTEE
SHALL POST THE LIST OF SPECIFIC PROJECTS AND THE COST OF EACH
PROJECT, ON ITS OFFICIAL WEBSITE NO LATER THAN AUGUST 15, 2020. IN
THE EVENT OF ANY EXCESS MONEY AS A RESULT OF THE ISSUANCE, THE
CAPITAL DEVELOPMENT COMMITTEE SHALL ALSO SPECIFY IN THEIR LIST
WHAT ANY REMAINDER MONEY MUST BE USED FOR.

SECTION 2. 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.