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An Act

SENATE BILL 20-219

BY SENATOR(S) Fields and Sonnenberg, Story, Cooke, Coram, Crowder, Gardner, Holbert, Priola, Rankin, Tate, Todd;
also REPRESENTATIVE(S) Valdez A. and Rich, Roberts, Arndt, Bird, Bockenfeld, Esgar, Lontine, McCluskie, McLachlan, Snyder.

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

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

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.

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, WITH PRINCIPAL AMORTIZATION NOT OCCURRING BEFORE JULY 1, 2022.

(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.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

KC Becker
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO