INTRODUCED

LLS NO. 22-0279.01 Jason Gelender x4330

SENATE BILL 22-025

SENATE SPONSORSHIP

Hansen,

HOUSE SPONSORSHIP

(None),

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<th>Senate Committees</th>
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A BILL FOR AN ACT

CONCERNING STATE CAPITAL FINANCING MANAGED BY THE STATE TREASURER, AND, IN CONNECTION THEREWITH, EXPANDING THE TYPES OF COLLATERAL THAT CAN BE USED TO SECURE SUCH FINANCING AND, IF DEEMED FEASIBLE AND IN THE BEST INTEREST OF THE STATE BY THE STATE TREASURER AFTER A REQUIRED STUDY IS COMPLETED, AUTHORIZING THE USE OF SECURITY TOKEN OFFERINGS FOR SUCH FINANCING.

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.)

Shading denotes HOUSE amendment  Double underlining denotes SENATE amendment  Capital letters or bold & italic numbers indicate new material to be added to existing statute.  Dashes through the words indicate deletions from existing statute.)
In the capital financing context:

- A security token is a digital, liquid contract made verifiable and secure through the use of blockchain technology that establishes its holder's right to a fraction of a financial asset such as a stock, bond, or certificate of participation; and
- A security token offering is a capital financing method in which security tokens representing fractional interests in a financial asset are sold to investors in lieu of selling the actual financial asset to investors.

Section 2 of the bill requires the state treasurer to study the feasibility of using security token offerings for state capital financing and determine the extent to which the use of security token offerings of state capital financing would be in the best interest of the state. The state treasurer is required to complete the study and report the study findings to the finance committees and joint budget committee of the general assembly by March 1, 2023, and to post the study findings on the department of the treasury's website. If the state treasurer determines that the use of security token offerings for state capital financing is feasible and in the best interest of the state, the state treasurer may use security token offerings for any state capital financing managed by the state treasurer.

Section 1 amends the definition of "financial obligation" used in the statute that governs state capital financing managed by the state treasurer to include security token offerings and requires the state public financing policy to include criteria for the issuance or incurrence of any authorized security token offering.

Section 3 broadens the definition of "eligible state facility" used for purposes of identifying the types of state-owned assets that may be used as collateral for state capital financing used to finance capital construction and transportation projects.
(a) (I) "Financial obligation" means any financial contract, note, warrant, check, bond, certificate, instrument, debenture, SECURITY TOKEN OFFERING, AS DEFINED IN SECTION 24-36-121.5 (2)(c), or other security, the principal amount of which is one million dollars or more, that is authorized to be issued or entered into by the state acting by and through a state agency under the laws of this state, that is fully or partially secured by any state revenues, and that is directly or indirectly related to the state's credit rating. "Financial obligation" includes, but is not limited to:

(5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5)(d.5) OF THIS SECTION, no later than ninety days after May 24, 2012, the state treasurer shall promulgate by rule, in accordance with article 4 of this title TITLE 24, a state public financing policy, and, in so doing, shall collaborate with various experts, including but not limited to the state controller, the office of state planning and budgeting, bond counsel, and the attorney general. The state treasurer shall present the state public financing policy to the capital development committee at the earliest meeting of the capital development committee at which time is available in the meeting schedule after the policy is finalized and shall provide a copy of the final state public financing policy to the joint budget committee. The state treasurer shall notify the capital development committee and the joint budget committee, in writing, of any substantive changes that are subsequently made to the state public financing policy. For purposes of this subsection (5), the attorney general is the legal advisor to the state treasurer. The state public financing policy shall include, but shall not be limited to, the following components:

(d.5) NO LATER THAN JUNE 1, 2023, THE CRITERIA FOR THE ISSUANCE OR INCURRENCE OF ANY SECURITY TOKEN OFFERING
AUTHORIZED BY SECTION 24-36-121.5 (4);

SECTION 2. In Colorado Revised Statutes, add 24-36-121.5 as follows:

24-36-121.5. Use of security tokens for state capital financing - feasibility study - authorization of use - legislative declaration - definitions. (1) (a) The general assembly hereby finds and declares that:

(I) Section 3 of Article XI of the State Constitution prohibits the state from issuing general obligation debt, and Section 20 of Article X of the State Constitution generally requires the state to obtain voter approval in advance before incurring any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever;

(II) Due to these limitations, the state typically engages in capital financing by:

(A) Issuing short-term tax or revenue anticipation notes, which the state must repay within the same state fiscal year in which they are issued for the purpose of smoothing general fund cash flow; and

(B) Entering into annually renewable financed purchase of an asset or certificate of participation agreements, which grant purchasers of certificates of participation the right to receive lease payments, for the purpose of financing the construction, improvement, or acquisition of capital assets;

(III) Certificates of participation issued in connection with a financed purchase of an asset or certificate of participation agreement evidence proportionate interests in the base rentals
PAID BY THE STATE PURSUANT TO THE AGREEMENT; AND

(IV) THE USE OF FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENTS BY THE STATE FOR CAPITAL FINANCING MAY LIMIT THE UNIVERSE OF INVESTORS THAT CAN INVEST IN THE STATE AND ASSIST IN FINANCING STATE CAPITAL PROJECTS AND MAY INCREASE THE STATE'S CAPITAL FINANCING COSTS.

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

(I) THE EMERGENCE OF DECENTRALIZED, SECURE BLOCKCHAIN TECHNOLOGY ALLOWS SECURITY TOKEN OFFERINGS TO BE USED FOR CAPITAL FINANCING;

(II) A SECURITY TOKEN OFFERING IS A CAPITAL FINANCING METHOD IN WHICH SECURITY TOKENS, WHICH ARE DIGITAL, LIQUID CONTRACTS MADE VERIFIABLE AND SECURE THROUGH THE USE OF BLOCKCHAIN TECHNOLOGY THAT ESTABLISH A TOKEN OWNER'S RIGHT TO A FRACTION OF A FINANCIAL ASSET, ARE SOLD TO INVESTORS;

(III) IF THE STATE USES THIS NEW AND INNOVATIVE METHOD OF CAPITAL FINANCING, THE STATE COULD SUBSTANTIALLY REDUCE ITS CAPITAL FINANCING COSTS BY:

(A) ALLOWING A MUCH BROADER RANGE OF INVESTORS, INCLUDING ORDINARY INDIVIDUALS, TO INVEST IN UNDERLYING FINANCIAL ASSETS SUCH AS CERTIFICATES OF PARTICIPATION ISSUED IN CONNECTION WITH FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENTS BY PURCHASING SECURITY TOKENS THAT EVIDENCE THEIR INVESTMENTS, THEREBY INCREASING INVESTOR DEMAND FOR THE UNDERLYING FINANCIAL ASSETS AND REDUCING THE RATE OF INTEREST THAT THE STATE MUST PAY TO INVESTORS; AND

(B) REDUCING THE STATE'S DEPENDENCE ON COMMERCIAL BANKS,
INSTITUTIONAL INVESTORS, MUTUAL FUNDS, AND PENSION FUNDS WHEN OBTAINING CAPITAL FINANCING AND THE HIGH UNDERWRITING FEES, INTEREST, AND OTHER TRANSACTIONAL COSTS THAT RESULT FROM THAT DEPENDENCE;

(IV) IN ADDITION TO REDUCING COSTS, THE STATE’S USE OF SECURITY TOKEN OFFERINGS FOR CAPITAL FINANCING WILL ALLOW ORDINARY COLORADANS, WHO AS TAXPAYERS COLLECTIVELY OWN STATE-OWNED CAPITAL ASSETS, TO ALSO SHARE IN THE OWNERSHIP OF LEASED STATE CAPITAL ASSETS UNTIL THE STATE HAS PAID ALL OF ITS LEASE OBLIGATIONS AND OBTAINED OWNERSHIP OF THE ASSETS; AND

(V) BECAUSE THE STATE HAS NOT PREVIOUSLY USED SECURITY TOKEN OFFERINGS FOR CAPITAL FINANCING AND THE STATE TREASURER HAS SUBSTANTIAL EXPERIENCE AND INSTITUTIONAL EXPERTISE IN CAPITAL FINANCING AND PROVIDES CENTRALIZED CAPITAL FINANCING MANAGEMENT ON BEHALF OF MANY STATE AGENCIES, IT IS NECESSARY AND APPROPRIATE TO:

(A) REQUIRE THE STATE TREASURER TO STUDY THE FEASIBILITY OF USING SECURITY TOKEN OFFERINGS FOR STATE CAPITAL FINANCING; AND

(B) AUTHORIZE THE STATE TREASURER TO USE SECURITY TOKEN OFFERINGS IF THE STATE TREASURER DETERMINES SUCH USE TO BE IN THE BEST INTEREST OF THE STATE.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "Blockchain Technology" means a mathematically secured, chronological, decentralized, distributed, and digital ledger or database that consists of records of transactions.
(b) "Security token" means a digital, liquid contract made verifiable and secure through the use of blockchain technology that establishes its owner's right to a fraction of a financial asset such as a stock, bond, or certificate of participation.

(c) "Security token offering" means a capital financing method in which security tokens representing fractional interests in a financial asset are sold to investors in lieu of selling the actual financial asset to investors.

(3) The state treasurer shall study the feasibility of using security token offerings for state capital financing and determine the extent to which the use of security token offerings of state capital financing would be in the best interest of the state. The state treasurer shall complete the study and report the study findings to the house of representatives finance committee and the senate finance committee, or their successor committees, and to the joint budget committee by March 1, 2023. The state treasurer shall also post the study findings on the department of the treasury's website.

(4) If the state treasurer determines, after completing and reporting the findings of the study required by subsection (3) of this section, that the use of security token offerings for state capital financing is feasible and in the best interest of the state, the state treasurer may use security token offerings for any state capital financing managed by the state treasurer pursuant to section 24-36-121.

SECTION 3. In Colorado Revised Statutes, 24-82-1302, amend
(3) as follows:

24-82-1302. Definitions. As used in this part 13, unless the context otherwise requires:

(3) "Eligible state facility" means any financially unencumbered building, structure, or facility that is owned by the state, including a state-owned asset including, without limitation, any building, structure, or facility, or land determined to be eligible by a governing board of a state institution of higher education, and but does not include any asset, building, structure, or facility, or land that is part of the state emergency reserve for any state fiscal year as designated in the annual general appropriation act.

SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.