

CHAPTER 386

GOVERNMENT - STATE

SENATE BILL 22-025

BY SENATOR(S) Hansen, Donovan, Lee, Rankin;
 also REPRESENTATIVE(S) Bird and McCluskie, Burnett, Lindsay, Snyder, Valdez D.

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 MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 24-36-121, **amend** (7)(b) as follows:

24-36-121. Authority to manage state public financing - state public financing cash fund - rules - legislative declaration - definitions. (7) (b) To the extent permitted by bond counsel, the ~~moneys~~ MONEY in the state public financing cash fund shall be used to reimburse the state treasurer for verifiable costs incurred in performing or overseeing the state's primary issuance compliance and post-issuance compliance responsibilities over the term of a financial obligation, including complying with or monitoring compliance with the requirements of the internal revenue code, making public disclosures or continuing disclosure undertakings required pursuant to federal securities laws or ensuring that such disclosures are made, and performing or coordinating requirements in connection with the financial obligation. THE STATE TREASURER MAY ALSO EXPEND UP TO ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS FROM THE STATE PUBLIC FINANCING CASH FUND TO FUND THE COMPLETION OF THE STUDY OF THE FEASIBILITY OF USING SECURITY TOKEN OFFERINGS FOR STATE CAPITAL FINANCING REQUIRED BY SECTION 24-36-121.5 (3).

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:

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.

(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 GENERAL ASSEMBLY, AFTER A STUDY BY THE STATE TREASURER OF THE FEASIBILITY OF USING SECURITY TOKEN OFFERINGS FOR STATE CAPITAL FINANCING, AUTHORIZES THE STATE TO USE 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, IF AUTHORIZED BY THE GENERAL ASSEMBLY, 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 RECOMMEND TO THE GENERAL ASSEMBLY THAT THE GENERAL ASSEMBLY ENACT LEGISLATION TO AUTHORIZE THE USE OF SECURITY TOKEN OFFERINGS FOR STATE CAPITAL FINANCING IF, AFTER COMPLETING THE FEASIBILITY STUDY, 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 THAT CANNOT BE ALTERED RETROACTIVELY.

(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. IF THE STATE TREASURER DETERMINES, AFTER COMPLETING THE FEASIBILITY STUDY, THAT THE USE OF SECURITY TOKENS FOR STATE CAPITAL FINANCING IS IN THE BEST INTEREST OF THE STATE, THE STATE TREASURER MAY RECOMMEND AS PART OF THE REPORT THAT THE GENERAL ASSEMBLY ENACT LEGISLATION TO AUTHORIZE SUCH USE. THE STATE TREASURER SHALL ALSO POST THE STUDY FINDINGS ON THE DEPARTMENT OF THE TREASURY'S WEBSITE.

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. Appropriation. (1) For the 2022-23 state fiscal year, \$100,000 is appropriated to the department of the treasury. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

- (a) \$70,000 for use by the administration division for operating expenses; and
- (b) \$30,000 for the purchase of legal services.

(2) For the 2022-23 state fiscal year, \$30,000 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of the treasury under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.2 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of the treasury.

SECTION 5. 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.

Approved: June 7, 2022