

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 23-0819.01 Megan McCall x4215

SENATE BILL 23-161

SENATE SPONSORSHIP

Fenberg and Will,

HOUSE SPONSORSHIP

Lynch and McCluskie,

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING STATE FUNDING TO FINANCE THE PURCHASE OF A**
102 **FIREFIGHTING AIRCRAFT TO RESPOND TO WILDFIRES.**

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>.)

The bill directs the state, through the state treasurer, to execute a financed purchase of an asset or certificate of participation agreement (financing agreement) in an amount not to exceed \$4 million in annual payments and for a term of up to 20 years for the purchase of a fire hawk helicopter, configured for wildfire and other public safety response needs, for use by the division of fire prevention and control (division) within the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

department of public safety, subject to the availability of a suitable aircraft at a reasonable price as determined by the state treasurer in consultation with the division. Payments under the financing agreement are subject to annual appropriation by the general assembly from the Colorado firefighting air corps fund, from the general fund, or from any other legally available source of money. The financing agreement that is entered into must authorize the state or the division to receive fee title to the fire hawk helicopter on or before the expiration of the terms of the financing agreement.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-33.5-1228.5
3 as follows:

4 **24-33.5-1228.5. Financed purchase of an asset or certificate of**
5 **participation agreement for firefighting and aerial firefighting assets.**

6 (1) (a) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 24-82-102
7 (1)(b) AND 24-82-801, AND PURSUANT TO SECTION 24-36-121, THE STATE,
8 ACTING BY AND THROUGH THE STATE TREASURER, SHALL, SUBJECT TO
9 AVAILABILITY OF A SUITABLE AIRCRAFT AT A REASONABLE PRICE AS
10 DETERMINED BY THE STATE TREASURER IN CONSULTATION WITH THE
11 DIVISION, EXECUTE A FINANCED PURCHASE OF AN ASSET OR CERTIFICATE
12 OF PARTICIPATION AGREEMENT FOR NO MORE THAN TWENTY YEARS OF
13 ANNUAL PAYMENTS, FOR THE PURCHASE BY THE STATE OF A FIRE HAWK
14 HELICOPTER, CONFIGURED FOR WILDFIRE AND OTHER PUBLIC SAFETY
15 RESPONSE NEEDS, FOR USE BY THE DIVISION. THE STATE SHALL EXECUTE
16 THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
17 AGREEMENT AS SOON AS POSSIBLE AFTER THE EFFECTIVE DATE OF THIS
18 SECTION.

19 (b) THE ANTICIPATED ANNUAL STATE-FUNDED PAYMENTS FOR THE
20 PRINCIPAL AND INTEREST COMPONENTS OF THE AMOUNT PAYABLE UNDER

1 THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
2 AGREEMENT AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION SHALL
3 NOT EXCEED FOUR MILLION DOLLARS.

4 (c) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER,
5 AT THE DIRECTION OF THE DIVISION AND AT THE STATE TREASURER'S SOLE
6 DISCRETION, MAY ENTER INTO A FINANCED PURCHASE OF AN ASSET OR
7 CERTIFICATE OF PARTICIPATION AGREEMENT AUTHORIZED BY SUBSECTION
8 (1)(a) OF THIS SECTION WITH ANY FOR-PROFIT OR NONPROFIT
9 CORPORATION, TRUST, OR COMMERCIAL BANK ACTING AS A TRUSTEE, AS
10 THE SELLER.

11 (d) THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
12 PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED BY SUBSECTION
13 (1)(a) OF THIS SECTION MUST PROVIDE THAT ALL OF THE OBLIGATIONS OF
14 THE STATE UNDER THE AGREEMENT ARE SUBJECT TO THE ACTION OF THE
15 GENERAL ASSEMBLY IN ANNUALLY MAKING MONEY AVAILABLE FOR ALL
16 PAYMENTS THEREUNDER. PAYMENTS UNDER THE FINANCED PURCHASE OF
17 AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT MUST BE MADE
18 SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO
19 MAKE EACH FULL PAYMENT DUE PAID FROM THE COLORADO FIREFIGHTING
20 AIR CORPS FUND CREATED IN SECTION 24-33.5-1228 (3)(a), REFERRED TO
21 IN THIS SECTION AS THE "FUND", FROM THE GENERAL FUND, OR FROM ANY
22 OTHER LEGALLY AVAILABLE SOURCE OF MONEY.

23 (e) THE AGREEMENT MUST ALSO PROVIDE THAT THE OBLIGATIONS
24 OF THE STATE DO NOT CREATE STATE DEBT WITHIN THE MEANING OF ANY
25 PROVISION OF THE STATE CONSTITUTION OR STATE LAW CONCERNING OR
26 LIMITING THE CREATION OF STATE DEBT AND ARE NOT A MULTIPLE
27 FISCAL-YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION

1 OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF
2 THE STATE CONSTITUTION. IF THE STATE DOES NOT RENEW A FINANCED
3 PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT
4 EXECUTED AS AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION, THE
5 SOLE SECURITY AVAILABLE IS THE PROPERTY THAT IS THE SUBJECT OF THE
6 NONRENEWED FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
7 PARTICIPATION AGREEMENT, THE FIRE HAWK HELICOPTER PURCHASED BY
8 THE DIVISION PURSUANT TO SECTION 24-33.5-1228 (3)(c)(II)(A), OR ANY
9 OTHER AVAILABLE FUNDS.

10 (f) THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
11 PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED BY SUBSECTION
12 (1)(a) OF THIS SECTION MAY CONTAIN SUCH TERMS, PROVISIONS, AND
13 CONDITIONS AS THE STATE TREASURER, ACTING ON BEHALF OF THE STATE,
14 DEEMS APPROPRIATE, INCLUDING ALL OPTIONAL TERMS; EXCEPT THAT THE
15 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
16 AGREEMENT MUST SPECIFICALLY AUTHORIZE THE STATE OR THE DIVISION
17 TO RECEIVE FEE TITLE TO ALL PROPERTY THAT IS SUBJECT TO THE
18 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
19 AGREEMENT ON OR BEFORE THE EXPIRATION OF THE TERMS OF THE
20 AGREEMENT.

21 (g) THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
22 PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED BY SUBSECTION
23 (1)(a) OF THIS SECTION MAY PROVIDE FOR THE ISSUANCE, DISTRIBUTION,
24 AND SALE OF INSTRUMENTS EVIDENCING RIGHTS TO RECEIVE RENTALS AND
25 OTHER PAYMENTS MADE AND TO BE MADE UNDER THE FINANCED
26 PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT.
27 THE INSTRUMENTS MAY BE ISSUED, DISTRIBUTED, OR SOLD ONLY BY THE

1 SELLER OR ANY PERSON DESIGNATED BY THE SELLER AND NOT BY THE
2 STATE. THE INSTRUMENTS DO NOT CREATE A RELATIONSHIP BETWEEN THE
3 PURCHASERS OF THE INSTRUMENTS AND THE STATE OR CREATE ANY
4 OBLIGATION ON THE PART OF THE STATE TO THE PURCHASERS. THE
5 INSTRUMENTS ARE NOT NOTES, BONDS, OR ANY OTHER EVIDENCE OF STATE
6 DEBT WITHIN THE MEANING OF ANY PROVISION OF THE STATE
7 CONSTITUTION OR STATE LAW CONCERNING OR LIMITING THE CREATION OF
8 STATE DEBT AND ARE NOT A MULTIPLE FISCAL-YEAR DIRECT OR INDIRECT
9 DEBT OR OTHER FINANCIAL OBLIGATION OF THE STATE WITHIN THE
10 MEANING OF SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION.

11 (h) INTEREST PAID UNDER A FINANCED PURCHASE OF AN ASSET OR
12 CERTIFICATE OF PARTICIPATION AGREEMENT AUTHORIZED PURSUANT TO
13 SUBSECTION (1)(a) OF THIS SECTION, INCLUDING INTEREST REPRESENTED
14 BY THE INSTRUMENTS, IS EXEMPT FROM COLORADO INCOME TAX.

15 (i) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER
16 OR THE DEPARTMENT FOR THE USE AND BENEFIT OF THE DIVISION, IS
17 AUTHORIZED TO ENTER INTO ANCILLARY AGREEMENTS AND INSTRUMENTS
18 THAT ARE NECESSARY OR APPROPRIATE IN CONNECTION WITH THE
19 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
20 AGREEMENT, INCLUDING BUT NOT LIMITED TO DEEDS, GROUND LEASES,
21 SUB-LEASES, EASEMENTS, OR OTHER INSTRUMENTS RELATED TO REAL
22 PROPERTY AND IN CONNECTION WITH THE PURCHASE OF THE FIRE HAWK
23 HELICOPTER.

24 (j) THE PROVISIONS OF SECTION 24-30-202 (5)(b) DO NOT APPLY
25 TO THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE AGREEMENT
26 EXECUTED AS AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION OR TO
27 ANY ANCILLARY AGREEMENT OR INSTRUMENT ENTERED INTO PURSUANT

1 TO THIS SUBSECTION (1). THE STATE CONTROLLER OR THE STATE
2 CONTROLLER'S DESIGNEE SHALL WAIVE ANY PROVISION OF THE FISCAL
3 RULES PROMULGATED PURSUANT TO SECTION 24-30-202 (1) AND (13)
4 THAT THE STATE CONTROLLER FINDS INCOMPATIBLE OR INAPPLICABLE
5 WITH RESPECT TO THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE
6 OF PARTICIPATION AGREEMENT OR AN ANCILLARY AGREEMENT OR
7 INSTRUMENT.

8 (2) (a) BEFORE EXECUTING THE FINANCED PURCHASE OF AN ASSET
9 OR CERTIFICATE OF PARTICIPATION AGREEMENT AUTHORIZED BY
10 SUBSECTION (1)(a) OF THIS SECTION, IN ORDER TO PROTECT AGAINST
11 FUTURE INTEREST RATE INCREASES, THE STATE, ACTING BY AND THROUGH
12 THE STATE TREASURER AND AT THE DISCRETION OF THE STATE
13 TREASURER, MAY ENTER INTO AN INTEREST RATE EXCHANGE AGREEMENT
14 PURSUANT TO ARTICLE 59.3 OF TITLE 11. THE FINANCED PURCHASE OF AN
15 ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT EXECUTED AS
16 AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION IS A PROPOSED
17 PUBLIC SECURITY FOR THE PURPOSES OF ARTICLE 59.3 OF TITLE 11. ANY
18 PAYMENTS MADE BY THE STATE UNDER AN AGREEMENT ENTERED
19 PURSUANT TO THIS SUBSECTION (2) MUST BE MADE SOLELY FROM MONEY
20 MADE AVAILABLE TO THE STATE TREASURER FROM THE EXECUTION OF A
21 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
22 AGREEMENT OR FROM MONEY DESCRIBED IN SUBSECTION (1)(d) OF THIS
23 SECTION.

24 (b) ANY AGREEMENT ENTERED INTO PURSUANT TO THIS
25 SUBSECTION (2) MUST ALSO PROVIDE THAT THE OBLIGATIONS OF THE
26 STATE DO NOT CREATE STATE DEBT WITHIN THE MEANING OF ANY
27 PROVISION OF THE STATE CONSTITUTION OR STATE LAW CONCERNING OR

1 LIMITING THE CREATION OF STATE DEBT AND ARE NOT A MULTIPLE
2 FISCAL-YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION
3 OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF
4 THE STATE CONSTITUTION.

5 (c) ANY MONEY RECEIVED BY THE STATE UNDER AN AGREEMENT
6 ENTERED INTO PURSUANT TO THIS SUBSECTION (2) MUST BE USED TO MAKE
7 PAYMENTS ON THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
8 PARTICIPATION AGREEMENT ENTERED INTO PURSUANT TO SUBSECTION (1)
9 OF THIS SECTION OR TO PAY FOR COSTS RELATED TO THE PROPERTY FOR
10 WHICH THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
11 PARTICIPATION AGREEMENT WAS EXECUTED.

12 (3) PROCEEDS OF THE FINANCED PURCHASE OF AN ASSET OR
13 CERTIFICATE OF PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED
14 BY SUBSECTION (1)(a) OF THIS SECTION MUST BE CREDITED TO THE FUND.

15 **SECTION 2.** In Colorado Revised Statutes, 24-33.5-1228,
16 **amend** (3)(a) and (3)(c)(I) as follows:

17 **24-33.5-1228. Colorado firefighting air corps - creation -**
18 **powers - aircraft acquisitions required - center of excellence -**
19 **unmanned aircraft systems study and pilot program - Colorado**
20 **firefighting air corps fund - creation - report - rules.** (3) (a) The
21 division shall administer the Colorado firefighting air corps fund, which
22 fund is hereby created in the state treasury. The division may seek and
23 accept gifts, grants, reimbursements, investments, bond revenues, sales
24 proceeds, commissions for services, sponsorships, advertising fees,
25 licensing fees, profits, or donations from private or public sources for the
26 purposes of this section. The fund consists of money transferred in
27 accordance with subsection (3)(c) of this section; all money that may be

1 appropriated to the fund by the general assembly; PROCEEDS OF THE
2 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
3 AGREEMENT EXECUTED PURSUANT TO SECTION 24-33.5-1228.5; and all
4 private and public funds received through gifts, grants, reimbursements,
5 investments, bond revenues, sales proceeds, commissions for services,
6 sponsorships, advertising fees, licensing fees, profits, or donations that
7 are transmitted to the state treasurer and credited to the fund. All interest
8 earned from the investment of money in the fund is credited to the fund.
9 The money in the fund is continuously appropriated for the purposes
10 indicated in subsection (3)(c) of this section. Any money not expended at
11 the end of the fiscal year remains in the fund.

12 (c) (I) Except as provided in subsection (3)(c)(III) of this section,
13 the division shall use the money in the Colorado firefighting air corps
14 fund for the purposes of subsection (2.5) of this section and for paying the
15 direct and indirect costs of maintaining the Colorado firefighting air
16 corps, including expenses, WHICH INCLUDES FINANCING COSTS, associated
17 with acquisition, retrofitting, labor, equipment, supply, transportation, air,
18 mobilization, repair, maintenance, and demobilization.

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