

CHAPTER 424

GOVERNMENT - STATE

SENATE BILL 09-257

BY SENATOR(S) Schwartz, Heath, Mitchell, Boyd, Carroll M., Foster, Gibbs, Groff, Hodge, Hudak, Morse, Newell, Shaffer B.,
Tapia, Tochtrop, Williams;
also REPRESENTATIVE(S) Fischer and Vigil, McFadyen, Rice, Solano, Hullinghorst, Massey, Merrifield, Middleton, Pace,
Ryden, Schafer S., Stephens, Summers, Todd, Waller.

AN ACT

CONCERNING AMENDMENTS TO THE "BUILDING EXCELLENT SCHOOLS TODAY ACT" THAT WILL ALLOW MORE EFFICIENT IMPLEMENTATION OF THE ACT WITHOUT REDUCING ITS FUNDING OR RESTRICTING EXISTING LEASE-PURCHASE AGREEMENT AUTHORIZATION.

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

SECTION 1. 22-43.7-102 (2) (b) (II) and (2) (c), Colorado Revised Statutes, are amended to read:

22-43.7-102. Legislative findings and declarations. (2) The general assembly further finds and declares that:

(b) It is necessary and appropriate for the state to build excellent schools today by assisting school districts, boards of cooperative services, and charter schools in completing needed public school facility capital construction projects more quickly by:

(II) Subject to the annual appropriation of such moneys by the general assembly, using a portion of the rental income AND royalties ~~interest, and other income~~, DERIVED FROM STATE SCHOOL LANDS AND, UNLESS AND UNTIL THE STATE TREASURER, PURSUANT TO SECTION 22-43.7-104 (2) (b) (I) (B), PROVIDES WRITTEN NOTICE TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT THE STATE TREASURER HAS DETERMINED THAT THE USE OF INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND TO MAKE LEASE PAYMENTS UNDER A LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) WILL PREVENT THE INTEREST COMPONENT OF THE LEASE PAYMENTS FROM QUALIFYING FOR EXEMPTION FROM FEDERAL INCOME

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

TAXATION AND AT ANY TIME AFTER THE STATE TREASURER, PURSUANT TO SECTION 22-43.7-104 (2) (b) (I) (C), HAS RESCINDED ANY SUCH DETERMINATION, INTEREST, AND OTHER INCOME, other than land sale proceeds, derived from state school lands, as well as certain other available state moneys and matching moneys provided by school districts, boards of cooperative services, and charter schools, to make lease payments payable under the terms of the lease-purchase agreements.

(c) It is also necessary and appropriate for the state to use a portion of such rental income AND royalties ~~interest, and other income and available moneys~~ AND, UNLESS AND UNTIL THE STATE TREASURER, PURSUANT TO SECTION 22-43.7-104 (2) (b) (I) (B), PROVIDES WRITTEN NOTICE TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT THE STATE TREASURER HAS DETERMINED THAT THE USE OF INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND TO MAKE LEASE PAYMENTS UNDER A LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) WILL PREVENT THE INTEREST COMPONENT OF THE LEASE PAYMENTS FROM QUALIFYING FOR EXEMPTION FROM FEDERAL INCOME TAXATION AND AT ANY TIME AFTER THE STATE TREASURER, PURSUANT TO SECTION 22-43.7-104 (2) (b) (I) (C), HAS RESCINDED ANY SUCH DETERMINATION, INTEREST AND OTHER INCOME, AS WELL AS CERTAIN OTHER AVAILABLE STATE MONEYS to continue to provide financial assistance to school districts, boards of cooperative services, and charter schools in the form of cash funding for school renovation and controlled maintenance projects.

SECTION 2. 22-43.7-104 (2) (b) (I) and (2) (b) (II), Colorado Revised Statutes, are amended, and the said 22-43.7-104 (2) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

22-43.7-104. Public school capital construction assistance fund - creation - crediting of moneys to fund - use of fund - emergency reserve - creation.

(2) (b) For each fiscal year commencing on or after July 1, 2008, the following moneys shall be credited to the assistance fund:

(I) (A) UNLESS AND UNTIL THE STATE TREASURER, PURSUANT TO SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), PROVIDES WRITTEN NOTICE TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT THE STATE TREASURER HAS DETERMINED THAT THE USE OF INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND TO MAKE LEASE PAYMENTS UNDER A LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) WILL PREVENT THE INTEREST COMPONENT OF THE LEASE PAYMENTS FROM QUALIFYING FOR EXEMPTION FROM FEDERAL INCOME TAXATION, the greater of thirty-five percent of the gross amount of public school lands income received during the fiscal year or an amount of such income equal to the difference between the total amount of lease payments to be made by the state under the terms of lease-purchase agreements entered into pursuant to section 22-43.7-110 (2) and the total amount of matching moneys to be paid to the state as lease payments under the terms of sublease-purchase agreements entered into pursuant to section 22-43.7-110 (2). The moneys required to be credited to the assistance fund pursuant to this ~~subparagraph (I)~~ SUB-SUBPARAGRAPH (A) may be taken from any single source or combination of sources of public school lands income.

(B) EXCEPT AS OTHERWISE PROVIDED IN SUB-SUBPARAGRAPH (C) OF THIS

SUBPARAGRAPH (I), IF THE STATE TREASURER DETERMINES DURING ANY FISCAL YEAR THAT THE USE OF INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND TO MAKE LEASE PAYMENTS UNDER A LEASE-PURCHASE AGREEMENT WILL PREVENT THE INTEREST COMPONENT OF THE LEASE PAYMENTS FROM QUALIFYING FOR EXEMPTION FROM FEDERAL INCOME TAXATION AND PROVIDES WRITTEN NOTICE TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY OF THE DETERMINATION, FOR THE PORTION OF THE FISCAL YEAR BEGINNING ON THE DATE THE WRITTEN NOTICE IS PROVIDED TO THE JOINT BUDGET COMMITTEE AND FOR EACH SUBSEQUENT FISCAL YEAR, THE GREATER OF FIFTY PERCENT OF THE GROSS AMOUNT OF PUBLIC SCHOOL LANDS INCOME OTHER THAN INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND RECEIVED DURING THE FISCAL YEAR OR AN AMOUNT OF SUCH PUBLIC SCHOOL LANDS INCOME EQUAL TO THE DIFFERENCE BETWEEN THE TOTAL AMOUNT OF LEASE PAYMENTS TO BE MADE BY THE STATE UNDER THE TERMS OF LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) AND THE TOTAL AMOUNT OF MATCHING MONEYS TO BE PAID TO THE STATE AS LEASE PAYMENTS UNDER THE TERMS OF SUBLEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2). THE MONEYS REQUIRED TO BE CREDITED TO THE ASSISTANCE FUND PURSUANT TO THIS SUB-SUBPARAGRAPH (B) MAY BE TAKEN FROM ANY SINGLE SOURCE OR COMBINATION OF SOURCES OF PUBLIC SCHOOL LANDS INCOME OTHER THAN INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND.

(C) IF, AFTER MAKING A DETERMINATION AND PROVIDING NOTICE PURSUANT TO SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), THE STATE TREASURER MAKES A NEW DETERMINATION DURING ANY FISCAL YEAR THAT THE USE OF INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND TO MAKE LEASE PAYMENTS UNDER A LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) WILL NOT PREVENT THE INTEREST COMPONENT OF THE LEASE PAYMENTS FROM QUALIFYING FOR EXEMPTION FROM FEDERAL INCOME TAXATION AND THE STATE TREASURER PROVIDES WRITTEN NOTICE TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT THE STATE TREASURER HAS MADE A NEW DETERMINATION AND IS RESCINDING THE DETERMINATION MADE PURSUANT TO SAID SUB-SUBPARAGRAPH (B) AS OF THE DATE THE WRITTEN NOTICE IS PROVIDED, FOR THE PORTION OF THE FISCAL YEAR BEGINNING ON THE DATE THE WRITTEN NOTICE IS PROVIDED TO THE JOINT BUDGET COMMITTEE AND FOR EACH SUBSEQUENT FISCAL YEAR, THE GREATER OF THIRTY-FIVE PERCENT OF THE GROSS AMOUNT OF PUBLIC SCHOOL LANDS INCOME RECEIVED DURING THE FISCAL YEAR OR AN AMOUNT OF SUCH INCOME EQUAL TO THE DIFFERENCE BETWEEN THE TOTAL AMOUNT OF LEASE PAYMENTS TO BE MADE BY THE STATE UNDER THE TERMS OF LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) AND THE TOTAL AMOUNT OF MATCHING MONEYS TO BE PAID TO THE STATE AS LEASE PAYMENTS UNDER THE TERMS OF SUBLEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2). THE MONEYS REQUIRED TO BE CREDITED TO THE ASSISTANCE FUND PURSUANT TO THIS SUB-SUBPARAGRAPH (C) MAY BE TAKEN FROM ANY SINGLE SOURCE OR COMBINATION OF SOURCES OF PUBLIC SCHOOL LANDS INCOME.

(II) The net proceeds MADE AVAILABLE TO THE STATE from the sale of ~~certificates of participation payable to the state~~ INSTRUMENTS EVIDENCING RIGHTS TO RECEIVE LEASE PAYMENTS MADE AND TO BE MADE under the terms of any lease-purchase

agreement entered into pursuant to section 22-43.7-110 (2), ~~as consideration from the lessor that issued the certificates of participation~~ UNLESS OTHERWISE REQUIRED BY THE DOCUMENTS PURSUANT TO WHICH THE INSTRUMENTS ARE ISSUED;

(V) ANY MONEYS TRANSFERRED OR APPROPRIATED TO THE ASSISTANCE FUND PURSUANT TO SUBSECTION (5) OF THIS SECTION.

SECTION 3. 22-43.7-104 (4), Colorado Revised Statutes, is amended, and the said 22-43.7-104 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

22-43.7-104. Public school capital construction assistance fund - creation - crediting of moneys to fund - use of fund - emergency reserve - creation.

(4) For each fiscal year commencing on or after July 1, 2008, an emergency reserve of at least one million dollars shall be maintained in the assistance fund except that an emergency reserve need not be maintained in any fiscal year in which the amount of EITHER public school lands income OR PUBLIC SCHOOL LANDS INCOME OTHER THAN INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND, OR BOTH, credited to the assistance fund PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION is an amount equal to the difference between the total amount of lease payments to be made by the state under the terms of lease-purchase agreements entered into pursuant to section 22-43.7-110 (2) and the total amount of matching moneys to be paid to the state as lease payments under the terms of sublease-purchase agreements entered into pursuant to section 22-43.7-110 (2) rather than, TO THE EXTENT APPLICABLE, thirty-five percent of the gross amount of public school lands income received by the state during the fiscal year OR FIFTY PERCENT OF THE GROSS AMOUNT OF PUBLIC SCHOOL LANDS INCOME OTHER THAN INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND RECEIVED BY THE STATE DURING THE FISCAL YEAR. The board may expend moneys from the emergency reserve only to provide emergency financial assistance to address a public school facility emergency in accordance with section 22-43.7-109 (8).

(5) IF THE STATE TREASURER, PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, PROVIDES WRITTEN NOTICE TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT THE STATE TREASURER HAS DETERMINED THAT THE USE OF INTEREST OR INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE PUBLIC SCHOOL FUND TO MAKE LEASE PAYMENTS UNDER A LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) WILL PREVENT THE INTEREST COMPONENT OF THE LEASE PAYMENTS FROM QUALIFYING FOR EXEMPTION FROM FEDERAL INCOME TAXATION, ANY SUCH INTEREST OR INCOME CREDITED TO THE ASSISTANCE FUND BEFORE THE TREASURER PROVIDES THE WRITTEN NOTICE SHALL BE SEGREGATED INTO A SEPARATE RESTRICTED ACCOUNT OF THE ASSISTANCE FUND. ALL INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF MONEYS IN THE RESTRICTED ACCOUNT SHALL BE CREDITED TO THE RESTRICTED ACCOUNT. MONEYS IN THE RESTRICTED ACCOUNT SHALL NOT BE COMMINGLED WITH OTHER MONEYS IN THE ASSISTANCE FUND. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, MONEYS IN THE RESTRICTED ACCOUNT SHALL NOT BE USED AND SHALL NOT BE AVAILABLE TO PAY LEASE PAYMENTS UNDER ANY LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SECTION 22-43.7-110

(2) UNLESS AND UNTIL THE STATE TREASURER, PURSUANT TO SUB-SUBPARAGRAPH (C) OF SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, PROVIDES WRITTEN NOTICE TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT THE STATE TREASURER IS RESCINDING THE DETERMINATION MADE PURSUANT TO SUB-SUBPARAGRAPH (B) OF SAID SUBPARAGRAPH (I) AS OF THE DATE THE WRITTEN NOTICE IS PROVIDED. MONEYS IN THE RESTRICTED ACCOUNT MAY BE USED FOR THE OTHER PURPOSES FOR WHICH MONEYS IN THE ASSISTANCE FUND MAY BE USED UNDER THIS ARTICLE.

(6) IF THE AMOUNT OF MONEYS IN THE ASSISTANCE FUND THAT, SUBJECT TO THE LIMITATIONS SET FORTH IN SUBSECTION (5) OF THIS SECTION, IS AVAILABLE TO PAY LEASE PAYMENTS UNDER ANY LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SECTION 22-43.7-110 (2) WILL BE INSUFFICIENT TO COVER THE FULL AMOUNT OF THE LEASE PAYMENTS REQUIRED BY THE LEASE-PURCHASE AGREEMENTS, THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER FROM ANY LEGALLY AVAILABLE SOURCE TO THE ASSISTANCE FUND SUFFICIENT MONEYS TO MAKE THE LEASE PAYMENTS.

SECTION 4. The introductory portion to 22-43.7-106 (1) (a), Colorado Revised Statutes, is amended to read:

22-43.7-106. Public school capital construction assistance board - creation - general powers and duties - rules. (1) (a) There is hereby created within the department the public school capital construction assistance board, which shall exercise its powers and perform its duties and functions under the department as if the same were transferred to the department by a **type 1** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. The board shall consist of nine appointed members, none of whom shall hold any state elective office. ~~and the director of the division, who shall serve as a nonvoting ex officio member of the board.~~ Five voting members of the board shall constitute a quorum. Board members shall be appointed as follows:

SECTION 5. 22-43.7-109 (2) (b) (I) (B), Colorado Revised Statutes, is amended to read:

22-43.7-109. Financial assistance for public school capital construction - application requirements - evaluation criteria - local match requirements. (2) (b) Notwithstanding the provisions of paragraph (a) of this subsection (2):

(I) The board:

(B) May establish a timeline for the 2008-09 fiscal year OR THE 2008-09 AND 2009-10 FISCAL YEARS only that takes into account any incomplete status of the priority assessment required by section 22-43.7-108, allows awards of financial assistance to be made based on consideration of so much of the assessment as has been completed, and differs from subsequent annual timelines.

SECTION 6. 22-43.7-110 (2) (b), Colorado Revised Statutes, is amended, and the said 22-43.7-110 (2) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

22-43.7-110. Financial assistance - grants - lease-purchase agreements.

(2) Subject to the following requirements and limitations, the board may also instruct the state treasurer to enter into lease-purchase agreements on behalf of the state to provide financial assistance to applicants by financing public school facility capital construction projects for which the state board has authorized the provision of financial assistance pursuant to section 22-43.7-109 (7):

(b) ~~The board may expend only matching moneys credited to the assistance fund pursuant to paragraph (c) of this subsection (2) or section 22-43.7-104 (2) (b) (IV) or interest or income derived from the deposit and investment of such matching moneys to make~~ STATE TREASURER MAY ENTER INTO LEASE-PURCHASE AGREEMENTS FOR WHICH THE AGGREGATE annual lease payments of principal or interest for any fiscal year ~~in excess of~~ EXCEED one-half of the maximum total amount of annual lease payments permitted for the fiscal year pursuant to paragraph (a) of this subsection (2) ONLY IF THE AGGREGATE AMOUNT OF MATCHING MONEYS EXPECTED TO BE CREDITED TO THE ASSISTANCE FUND PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION (2) AND SECTION 22-43.7-104 (2) (b) (IV) AND ANY INTEREST OR INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF THE MATCHING MONEYS IS AT LEAST EQUAL TO THE ANNUAL LEASE PAYMENTS OF PRINCIPAL AND INTEREST THAT EXCEED ONE-HALF OF SAID MAXIMUM TOTAL AMOUNT.

(g) IF THE STATE TREASURER DEEMS IT TO BE NECESSARY OR ADVISABLE, THE STATE TREASURER MAY ENTER INTO A LEASE-PURCHASE AGREEMENT ON BEHALF OF THE STATE FOR ONLY A PORTION OF A PUBLIC SCHOOL FACILITY FOR WHICH FINANCIAL ASSISTANCE IS BEING PROVIDED OR FOR ALL OR A PORTION OF A DIFFERENT PUBLIC SCHOOL FACILITY OR OTHER PROPERTY OF A SCHOOL DISTRICT.

(h) NOTWITHSTANDING THE AUTHORITY OF THE BOARD TO INSTRUCT THE STATE TREASURER TO ENTER INTO LEASE-PURCHASE AGREEMENTS ON BEHALF OF THE STATE, IN ORDER TO ENSURE THAT LEASE-PURCHASE AGREEMENTS ARE ENTERED INTO UNDER FAVORABLE FINANCIAL MARKET CONDITIONS, THE STATE TREASURER SHALL HAVE SOLE DISCRETION TO DETERMINE THE TIMING OF THE STATE TREASURER'S ENTRY INTO ANY LEASE-PURCHASE AGREEMENT ON BEHALF OF THE STATE PURSUANT TO THIS SUBSECTION (2).

SECTION 7. 36-1-116 (1) (a) (II), Colorado Revised Statutes, is amended to read:

36-1-116. Disposition of rentals, royalties, and timber sale proceeds.

(1) (a) (II) For ~~the 2005-06~~ THE 2008-09 state fiscal year and each state fiscal year thereafter, the first eleven million dollars of proceeds received by the state for the sale of timber on public school lands, rental payments for the use and occupation of the surface of said lands, and rentals or lease payments for sand, gravel, clay, stone, coal, oil, gas, geothermal resources, gold, silver, or other minerals on said lands other than proceeds, rentals, and payments allocated to the state land board trust administration fund pursuant to section 36-1-145 (3) or credited to the public school capital construction assistance fund created in section 22-43.7-104 (1), C.R.S., pursuant to section 22-43.7-104 (2) (b) (I), C.R.S., shall be credited to the public school income fund for distribution as provided by law. Any amount of such proceeds, rentals, and payments received by the state during the fiscal year in excess of eleven million dollars shall be credited to the permanent school fund and shall

become part of the principal of the permanent school fund.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 4, 2009