

CHAPTER 328

GOVERNMENT - STATE

SENATE BILL 93-245

BY SENATORS Wells and Mutzebaugh;
also REPRESENTATIVES Foster and Pfiffner.

AN ACT

CONCERNING MULTIPLE-FISCAL YEAR OBLIGATIONS.

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

SECTION 1. 24-30-202, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-30-202. Procedures - vouchers and warrants - rules - penalties. (5.5) ANY COMMITMENT VOUCHER THAT PROVIDES THAT THE FINANCIAL OBLIGATIONS OF THE STATE IN SUBSEQUENT FISCAL YEARS ARE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, AND OTHERWISE MADE AVAILABLE SHALL NOT BE DEEMED TO CREATE ANY STATE MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION WHATSOEVER FOR PURPOSES OF SECTION 20 (4) (b) OF ARTICLE X OF THE STATE CONSTITUTION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBSECTION (5.5), NO CONTRACT FOR THE PURCHASE OR LEASE OF PROPERTY, REAL OR PERSONAL, SHALL BE ENTERED INTO IF IT INVOLVES THE ISSUANCE OF CERTIFICATES OF PARTICIPATION OR OTHER INSTRUMENTS EVIDENCING THE COMMITMENT OF THE STATE TO MAKE PAYMENTS IN SUBSEQUENT FISCAL YEARS OF MONEYS DUE UNDER SUCH CONTRACT, EVEN IF SUCH COMMITMENT OF FUNDS IS EXPRESSLY MADE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, OR OTHERWISE MADE AVAILABLE, UNLESS AND UNTIL A COURT OF COMPETENT JURISDICTION RENDERS A FINAL DECISION AS TO THE CONSTITUTIONALITY OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION OR OTHER INSTRUMENTS EVIDENCING THE COMMITMENT OF A DISTRICT TO MAKE PAYMENTS IN SUBSEQUENT FISCAL YEARS OF MONEYS DUE UNDER A CONTRACT FOR THE PURCHASE OR LEASE OF PROPERTY, REAL OR PERSONAL, EVEN IF SUCH COMMITMENT OF FUNDS IS EXPRESSLY MADE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, OR OTHERWISE MADE AVAILABLE. FOR PURPOSES OF THIS

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

SECTION AND PARTS 7 AND 8 OF ARTICLE 82 OF TITLE 24, C.R.S., A FINAL DECISION BY A COURT OF COMPETENT JURISDICTION SHALL MEAN A DECISION BY THE COLORADO SUPREME COURT OR BY THE COLORADO COURT OF APPEALS AFTER ANY PERIOD FOR APPEAL TO THE COLORADO SUPREME COURT HAS PASSED. THE DEPARTMENT OF ADMINISTRATION SHALL REPORT TO THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL, THE JOINT BUDGET COMMITTEE, AND THE CAPITAL DEVELOPMENT COMMITTEE OF THE GENERAL ASSEMBLY CONCERNING THE OCCURRENCE OF ANY SUCH COURT DECISION. IF A LEASE-PURCHASE AGREEMENT IS SUBJECT TO THE REQUIREMENT OF SPECIFIC AUTHORIZATION BY THE GENERAL ASSEMBLY UNDER PART 8 OF SAID ARTICLE 82, SUCH COMMITTEES SHALL MAKE A RECOMMENDATION TO THE GENERAL ASSEMBLY CONCERNING WHETHER TO AUTHORIZE THE LEASE-PURCHASE AGREEMENT INVOLVING THE ISSUANCE OF CERTIFICATES OF PARTICIPATION OR OTHER INSTRUMENTS. THE DEPARTMENT OF ADMINISTRATION AND THE COLORADO COMMISSION ON HIGHER EDUCATION SHALL MAINTAIN COMPARATIVE DATA WHICH WILL ASSIST IN DETERMINING THE RELATIVE COSTS TO THE STATE, OVER THE ENTIRE TERM OF THE ARRANGEMENT, OF FINANCING THE PURCHASE OR LEASE OF PROPERTY THROUGH PAY-AS-YOU-GO METHODS, CERTIFICATES OF PARTICIPATION, OR OTHER ARRANGEMENTS.

SECTION 2. 24-82-703, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-82-703. Lessor. The lessor under any additional lease-purchase agreement entered into by the director pursuant to the provisions of this part 7 shall be a nonprofit corporation organized for the purpose of becoming a lessor pursuant to the provisions of this part 7. The controller, the director of the office of state planning and budgeting, and the director of research of the legislative council shall serve ex officio as directors of such nonprofit corporation. The participation of such nonprofit corporation, and of the controller, the director of the office of state planning and budgeting, and the director of research of the legislative council, acting as directors of such nonprofit corporation, shall not constitute a potential conflicting interest, as such term is defined in section 18-8-308 (2), C.R.S. ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, THE POWERS OF THE NONPROFIT CORPORATION SHALL BE LIMITED TO THE REFINANCING OF INSTRUMENTS ISSUED PURSUANT TO THE PROVISIONS OF THIS PART 7 ON OR BEFORE NOVEMBER 3, 1992, UNLESS AND UNTIL A COURT OF COMPETENT JURISDICTION ENTERS A FINAL DECISION AS TO THE CONSTITUTIONALITY OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION OR OTHER INSTRUMENTS EVIDENCING THE COMMITMENT OF A DISTRICT TO MAKE PAYMENTS IN SUBSEQUENT FISCAL YEARS OF MONEYS DUE UNDER A CONTRACT FOR THE PURCHASE OR LEASE OF PROPERTY, REAL OR PERSONAL, EVEN IF SUCH COMMITMENT OF FUNDS IS EXPRESSLY MADE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, OR OTHERWISE MADE AVAILABLE. NOTHING IN THE REPEAL OF OTHER SECTIONS OF THIS PART 7 SHALL BE CONSTRUED TO IMPAIR ANY CONTRACT OR INSTRUMENT IN EXISTENCE ON NOVEMBER 3, 1992, IF SAID CONTRACT WAS VALIDLY ENTERED INTO OR SAID INSTRUMENT WAS VALIDLY ISSUED UNDER THE LAW IN EFFECT AT THE TIME OF ENTERING INTO SAID CONTRACT OR ISSUING SAID INSTRUMENT.

SECTION 3. 24-82-705, Colorado Revised Statutes, 1988 Repl. Vol., is amended to read:

24-82-705. Terms and conditions of lease-purchase agreements. Any additional lease-purchase agreement entered into by the director pursuant to the provisions of this part 7 may contain such terms, provisions, and conditions as the director may deem appropriate. Such provisions may allow the state to receive fee title to the real and personal property which is the subject of such additional lease-purchase agreement on or prior to the expiration of the entire term of the agreement, including all optional renewal terms. Any additional lease-purchase agreement entered into pursuant to the provisions of this part 7 may further provide for the issuance, distribution, and sale of instruments evidencing rights to receive rentals and other payments made and to be made under such additional lease-purchase agreement, BUT ONLY IF AND AFTER A COURT OF COMPETENT JURISDICTION RENDERS A FINAL DECISION AS TO THE CONSTITUTIONALITY OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION OR OTHER INSTRUMENTS EVIDENCING THE COMMITMENT OF A DISTRICT TO MAKE PAYMENTS IN SUBSEQUENT FISCAL YEARS OF MONEYS DUE UNDER AN INSTALLMENT PURCHASE AGREEMENT FOR THE PURCHASE OF REAL OR PERSONAL PROPERTY WHICH REQUIRES PAYMENTS DURING MORE THAN ONE FISCAL YEAR, OR ANY AGREEMENT FOR THE LEASE OR RENTAL OF REAL OR PERSONAL PROPERTY WHICH REQUIRES PAYMENTS DURING MORE THAN ONE FISCAL YEAR AND UNDER WHICH SUCH DISTRICT IS ENTITLED TO RECEIVE TITLE TO THE PROPERTY AT THE END OF THE TERM FOR NOMINAL OR NO ADDITIONAL CONSIDERATION. Such instruments shall not be notes, bonds, or any other evidence of indebtedness of the state of Colorado within the meaning of any provision of the Colorado constitution or the laws of the state of Colorado concerning or limiting the creation of indebtedness by the state of Colorado. Interest paid under any additional lease-purchase agreement entered into pursuant to this part 7, including interest represented by such instruments, shall be exempt from Colorado income tax. Any such additional lease-purchase agreements shall provide an option for the state to purchase the property which is the subject of the lease prior to the termination of such additional lease-purchase agreement. In no event shall any individual representing a firm which was the successful bidder for a proposed financial services contract, which contract related to a master leasing program, prior to June 20, 1987, be allowed to become the underwriter or financial advisor for any master leasing agreement entered into by the director prior to June 30, 1988, pursuant to the provisions of this part 7.

SECTION 4. 24-82-801, Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended to read:

24-82-801. Lease-purchase agreements for acquisition of personal property.

(1) Except as otherwise may be provided by the annual general appropriation act or in subsection (4) of this section, no moneys subject to appropriation by the general assembly shall be expended for any lease-purchase agreement unless expressly appropriated for such purpose.

(2) Except as provided in subsection (4) of this section, no lease-purchase agreement to which an agency of state government is a party and which requires total payments exceeding fifty thousand dollars over the term of the agreement shall be entered into subsequent to the effective date of this part 8 unless such agreement is specifically authorized, prior to its execution, by a separate bill enacted by the general assembly or specifically authorized by appropriation in the annual general appropriation act. Subsequent to any authorization of a lease-purchase agreement by the general assembly acting by separate bill, rentals and other payments by the state

under any such lease-purchase agreement may be made from moneys appropriated by the general assembly without the necessity of a separate bill.

(3) As used in this section, "lease-purchase agreement" means any installment purchase agreement for the purchase of REAL OR personal property which requires payments during more than one fiscal year, or any agreement for the lease or rental of REAL OR personal property which requires payments during more than one fiscal year and under which the state is entitled to receive title to the property at the end of the term for nominal or no additional consideration. Such agreement may further provide for the issuance, distribution, and sale of instruments evidencing rights to receive rentals and other payments made by the state under any such lease-purchase agreement, BUT ONLY IF AND AFTER A COURT OF COMPETENT JURISDICTION RENDERS A FINAL DECISION AS TO THE CONSTITUTIONALITY OF THE ISSUANCE OF CERTIFICATES OF PARTICIPATION OR OTHER INSTRUMENTS EVIDENCING THE COMMITMENT OF A DISTRICT TO MAKE PAYMENTS SUBJECT TO ANNUAL APPROPRIATION IN SUBSEQUENT FISCAL YEARS OF MONEYS DUE UNDER AN INSTALLMENT PURCHASE AGREEMENT FOR THE PURCHASE OF REAL OR PERSONAL PROPERTY WHICH REQUIRES PAYMENTS DURING MORE THAN ONE FISCAL YEAR, OR ANY AGREEMENT FOR THE LEASE OR RENTAL OF REAL OR PERSONAL PROPERTY WHICH REQUIRES PAYMENTS SUBJECT TO ANNUAL APPROPRIATION DURING MORE THAN ONE FISCAL YEAR AND UNDER WHICH SUCH DISTRICT IS ENTITLED TO RECEIVE TITLE TO THE PROPERTY AT THE END OF THE TERM FOR NOMINAL OR NO ADDITIONAL CONSIDERATION. Such instruments shall not include notes, bonds, or any other evidence of indebtedness of the state within the meaning of any provision of the constitution or laws of the state of Colorado concerning or limiting the creation of indebtedness by the state.

(4) Notwithstanding the provisions of this section to the contrary, the department of transportation and institutions of higher education may enter into lease-purchase agreements as otherwise provided by law and shall submit to the state auditor's office on an annual basis a report on all outstanding lease-purchase agreements.

(5) NOTHING IN THE AMENDMENT OF THIS SECTION SHALL BE CONSTRUED TO IMPAIR ANY CONTRACT OR INSTRUMENT IN EXISTENCE ON NOVEMBER 3, 1992, IF SAID CONTRACT WAS VALIDLY ENTERED INTO OR SAID INSTRUMENT WAS VALIDLY ISSUED UNDER THE LAW IN EFFECT AT THE TIME OF ENTERING INTO SAID CONTRACT OR ISSUING SAID INSTRUMENT.

SECTION 5. 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 9, 1993