

CHAPTER 261

GOVERNMENT - STATE

SENATE BILL 03-249

BY SENATOR(S) Owen, Anderson, Kester, Lamborn, and Teck;
also REPRESENTATIVE(S) Stengel.

AN ACT

**CONCERNING AUTHORITY FOR THE STATE TO ENTER INTO LEVERAGED LEASING AGREEMENTS, AND,
IN CONNECTION THEREWITH, SPECIFYING THAT PROPERTY THAT IS THE SUBJECT OF A LEVERAGED
LEASING AGREEMENT IS EXEMPT FROM PROPERTY TAXATION.**

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

SECTION 1. Article 82 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

**PART 10
LEVERAGED LEASING**

24-82-1001. Legislative declaration - exclusion of proceeds of leveraged leasing agreements from fiscal year spending - voter approval not required.

(1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION LIMITS STATE FISCAL YEAR SPENDING.

(b) SECTION 20 (2) (e) OF ARTICLE X DEFINES "FISCAL YEAR SPENDING" TO INCLUDE ALL REVENUES AND EXPENDITURES EXCEPT THOSE FOR REFUNDS AND THOSE FROM CERTAIN SOURCES, SUCH AS PROPERTY SALES.

(c) MONETARY CONSIDERATION PAID TO THE STATE BY A PRIVATE PERSON IN CONNECTION WITH A LEVERAGED LEASING AGREEMENT CONSTITUTES REVENUES TO THE STATE FROM A PROPERTY SALE BECAUSE THE CONSIDERATION IS PAID IN EXCHANGE FOR A PROPERTY INTEREST IN A QUALIFIED STATE ASSET AND CONSTITUTES REVENUES FROM A PROPERTY SALE, AND SUCH REVENUES ARE THEREFORE EXCLUDED FROM STATE FISCAL YEAR SPENDING.

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

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

(a) SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION REQUIRES VOTER APPROVAL IN ADVANCE FOR CREATION OF ANY MULTIPLE-FISCAL YEAR FINANCIAL OBLIGATION WHATSOEVER WITHOUT ADEQUATE PRESENT CASH RESERVES PLEDGED IRREVOCABLY AND HELD FOR PAYMENTS IN ALL FUTURE FISCAL YEARS.

(b) THE SUBLEASE OF A QUALIFIED STATE CAPITAL ASSET FROM A PRIVATE PERSON TO THE STATE UNDER A LEVERAGED LEASING AGREEMENT IS A MULTIPLE-FISCAL YEAR FINANCIAL OBLIGATION OF THE STATE UNDER SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION, BUT THE STATE MAY ENTER INTO A LEVERAGED LEASING AGREEMENT WITHOUT VOTER APPROVAL IN ADVANCE BECAUSE A LEVERAGED LEASING AGREEMENT REQUIRES THE STATE TO DEPOSIT INTO A SPECIFIED ACCOUNT ADEQUATE CASH RESERVES PLEDGED IRREVOCABLY FOR SUBLEASE PAYMENTS IN ALL FUTURE FISCAL YEARS.

24-82-1002. Definitions. AS USED IN THIS PART 10, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "LEVERAGED LEASING AGREEMENT" MEANS AN AGREEMENT OR A SERIES OF AGREEMENTS BETWEEN THE STATE AND A PRIVATE PERSON UNDER WHICH:

(a) IN EXCHANGE FOR MONETARY CONSIDERATION PAID IN A LUMP SUM WHEN THE LEASE CLOSES, THE STATE LEASES A QUALIFIED STATE CAPITAL ASSET TO A PRIVATE PERSON FOR A TERM OF SUFFICIENT LENGTH TO ALLOW THE PRIVATE PERSON TO DEPRECIATE THE ASSET FOR FEDERAL INCOME TAX PURPOSES UNDER THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, OR ANY SUCCESSOR PROVISION THERETO, AND RETAINS A RIGHT TO CANCEL THE LEASE IN EXCHANGE FOR SPECIFIED CONSIDERATION;

(b) THE PRIVATE PERSON SUBLEASES THE QUALIFIED STATE CAPITAL ASSET BACK TO THE STATE PURSUANT TO A SUBLEASE CONTRACT THAT:

(I) IS FOR A TERM SHORTER THAN THE TERM OF THE LEASE;

(II) GIVES THE PRIVATE PERSON LEASEHOLD RIGHTS IN THE ASSET; AND

(III) REQUIRES AN AMOUNT OF THE MONETARY CONSIDERATION PAID IN A LUMP SUM TO THE STATE WHEN THE LEASE CLOSES THAT IS ADEQUATE TO MEET ALL LEASE PAYMENTS TO BE MADE BY THE STATE UNDER THE TERMS OF THE SUBLEASE CONTRACT TO BE DEPOSITED INTO A SPECIFIED ACCOUNT ESTABLISHED PURSUANT TO THE SUBLEASE CONTRACT AS ADEQUATE CASH RESERVES PLEDGED IRREVOCABLY FOR SUBLEASE PAYMENTS IN ALL FUTURE FISCAL YEARS; AND

(c) THE STATE RETAINS THE RIGHT TO THE USE OF THE QUALIFIED STATE CAPITAL ASSET FOR THE DURATION OF THE TERM OF THE SUBLEASE.

(2) "QUALIFIED STATE CAPITAL ASSET" OR "ASSET" MEANS ANY BUILDING, STRUCTURE, FACILITY, UTILITY, TRANSPORTATION INFRASTRUCTURE, QUALIFIED TECHNOLOGICAL EQUIPMENT AS DEFINED BY SECTION 168 (i) (2) (A) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, OR ANY SUCCESSOR PROVISION

THERE TO, OR OTHER EQUIPMENT OWNED BY OR HELD IN TRUST FOR THE STATE THAT BECOMES A DEPRECIABLE ASSET FOR PURPOSES OF INCOME TAXATION WHEN LEASED FOR A TERM OF SUFFICIENT LENGTH TO ANY PRIVATE PERSON THAT DOES NOT HAVE TAX-EXEMPT STATUS.

24-82-1003. Leveraged leasing. (1) ON AND AFTER THE EFFECTIVE DATE OF THIS PART 10, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL, WITH THE APPROVAL OF THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING AND THE STATE TREASURER, MAY ENTER INTO LEVERAGED LEASING AGREEMENTS ON BEHALF OF THE STATE.

(2) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL MAY RETAIN ATTORNEYS, CONSULTANTS, OR FINANCIAL PROFESSIONALS TO THE EXTENT NECESSARY TO PROTECT THE INTERESTS OF THE STATE AND TO ENSURE THE PROPER EXECUTION OF A LEVERAGED LEASING AGREEMENT. THE EXECUTIVE DIRECTOR SHALL USE A COMPETITIVE SELECTION PROCESS APPROVED BY THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING TO SELECT ANY ATTORNEYS, CONSULTANTS, OR FINANCIAL PROFESSIONALS TO BE RETAINED, BUT EXECUTION OF SUCH RETENTION AGREEMENTS SHALL NOT BE GOVERNED BY THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE. ANY FEES CHARGED BY ANY PERSONS RETAINED SHALL BE PAID ONLY FROM THE LUMP SUM PAID TO THE STATE IN CONNECTION WITH THE LEVERAGED LEASING AGREEMENT AND SHALL NOT BE PAID FROM ANY OTHER SOURCE.

(3) THE STATE TREASURER SHALL CREDIT ALL MONETARY CONSIDERATION PAID IN A LUMP SUM TO THE STATE UNDER THE TERMS OF A LEVERAGED LEASING AGREEMENT WHEN THE AGREEMENT CLOSES THAT IS NOT REQUIRED TO BE DEPOSITED INTO A SPECIFIED ACCOUNT ESTABLISHED PURSUANT TO A SUBLEASE CONTRACT AS ADEQUATE CASH RESERVES PLEDGED IRREVOCABLY FOR SUBLEASE PAYMENTS IN ALL FUTURE FISCAL YEARS TO THE CONTROLLED MAINTENANCE TRUST FUND CREATED IN SECTION 24-75-302.5.

24-82-1004. Leased assets not subject to taxation. A QUALIFIED STATE CAPITAL ASSET THAT IS THE SUBJECT OF A LEVERAGED LEASING AGREEMENT SHALL BE TREATED FOR TAX PURPOSES AS TAX-EXEMPT PROPERTY OWNED BY THE STATE.

24-82-1005. Tort liability not created by leveraged leasing agreement. THE LEASE OF A QUALIFIED STATE CAPITAL ASSET BY THE STATE TO A PRIVATE PERSON AND THE SUBLEASE OF THE ASSET BACK TO THE STATE BY THE PRIVATE PERSON PURSUANT TO A LEVERAGED LEASING AGREEMENT SHALL NOT CAUSE THE PRIVATE PERSON TO WHOM THE QUALIFIED STATE CAPITAL ASSET IS BEING LEASED TO INCUR ANY LIABILITY IN TORT BY VIRTUE OF THE PRIVATE PERSON'S STATUS AS A LESSOR UNDER THE LEVERAGED LEASING AGREEMENT.

SECTION 2. 24-75-302.5 (2) (a), Colorado Revised Statutes, is amended to read:

24-75-302.5. Controlled maintenance - trust fund. (2) (a) There is hereby created the controlled maintenance trust fund, the principal of which shall consist of general fund revenues transferred thereto as provided in section 24-75-201.1 (1) (c.5) (II) AND PROCEEDS OF LEVERAGED LEASING AGREEMENTS DEPOSITED THERETO PURSUANT TO SECTION 24-82-1003 (3). For the 1996-97 fiscal year and fiscal years thereafter, the principal of the trust fund may constitute all or some portion of the

state emergency reserve established pursuant to section 24-77-104 and may be expended in any given fiscal year as provided in said section. The principal of the trust fund shall not be expended or appropriated for any other purpose. The state treasurer may in the state treasurer's discretion deposit, redeposit, invest, and reinvest moneys accrued or accruing to the controlled maintenance trust fund in the types of deposits and investments authorized in sections 24-36-109, 24-36-112, and 24-36-113.

SECTION 3. 39-3-124, Colorado Revised Statutes, is amended to read:

39-3-124. Property used by governmental entity - installment sales or lease-purchase or leveraged lease agreement - exemption. (1) Property, real and personal, which is used by the state or any of its political subdivisions pursuant to the provisions of any installment sales agreement, lease-purchase agreement, or any other agreement whereby the state or such political subdivision shall be entitled to acquire title to such property at the end of the agreement term without cost or for only nominal consideration shall be exempt from the levy and collection of property tax.

(2) A LEASEHOLD INTEREST IN REAL OR PERSONAL PROPERTY THAT IS OWNED BY THE STATE OR BY A POLITICAL SUBDIVISION OF THE STATE AND THAT HAS BEEN LEASED TO A PRIVATE PERSON, THE USE AND POSSESSION OF WHICH HAS BEEN LEASED BACK TO THE STATE OR A POLITICAL SUBDIVISION OF THE STATE, SHALL BE EXEMPT FROM THE LEVY AND COLLECTION OF PROPERTY TAX DURING THE TERM OF THE USE AND POSSESSION OF THE PROPERTY BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE. PROPERTY THAT IS THE SUBJECT OF A LEVERAGED LEASING AGREEMENT EXECUTED BY THE STATE OR BY A POLITICAL SUBDIVISION OF THE STATE SHALL BE TREATED AS TAX-EXEMPT PROPERTY OWNED BY THE STATE FOR PURPOSES OF ANY STATE OR LOCAL TAX.

(3) THE LEASE OF PROPERTY BY A POLITICAL SUBDIVISION OF THE STATE TO A PRIVATE PERSON AND THE SUBLEASE OF THE PROPERTY BACK TO THE POLITICAL SUBDIVISION OF THE STATE PURSUANT TO A LEVERAGED LEASING AGREEMENT SHALL NOT CAUSE THE PRIVATE PERSON TO WHOM THE PROPERTY HAS BEEN LEASED TO INCUR ANY LIABILITY IN TORT BY VIRTUE OF THE PRIVATE PERSON'S STATUS AS A LESSOR UNDER THE LEVERAGED LEASING AGREEMENT.

SECTION 4. 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: May 14, 2003