

## CHAPTER 297

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**GOVERNMENT - STATE**


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**HOUSE BILL 05-1330**

BY REPRESENTATIVE(S) Buescher, Hall, Plant, Frangas, Todd, and Vigil;  
also SENATOR(S) Owen, Keller, and Tapia.

**AN ACT**

**CONCERNING THE SALE OF A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY IF THE GENERAL FUND STATUTORY RESERVE IS PROJECTED TO BE LESS THAN ONE-HALF OF THE REQUIRED AMOUNT FOR THE 2005-06 FISCAL YEAR, PROVIDED THAT THE ELIGIBLE STATE FACILITY IS SIMULTANEOUSLY LEASED BACK BY THE STATE PURSUANT TO A LEASE-PURCHASE AGREEMENT.**

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

**SECTION 1.** 24-75-201.5 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-75-201.5. Revenue shortfalls - required actions by the governor with respect to the reserve.** (1) (f) FOR THE FISCAL YEAR 2005-06 ONLY, IF THE REVENUE ESTIMATE PREPARED IN ACCORDANCE WITH SECTION 24-75-201.3 (2) IN JUNE, SEPTEMBER, OR DECEMBER OF 2005 INDICATES THAT GENERAL FUND EXPENDITURES FOR SUCH FISCAL YEAR BASED ON APPROPRIATIONS THEN IN EFFECT WILL RESULT IN THE USE OF ONE-HALF OR MORE OF THE RESERVE REQUIRED BY SECTION 24-75-201.1 (1) (d), THE GOVERNOR SHALL EITHER:

(I) FORMULATE AND IMPLEMENT A PLAN PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1); OR

(II) UPON WRITTEN ORDER, DIRECT THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL TO ATTEMPT TO SELL A LEGAL INTEREST IN ONE OR MORE ELIGIBLE STATE FACILITIES PURSUANT TO SECTION 24-82-1102, IN ORDER THAT THE NET PROCEEDS FROM SUCH SALE MAY BE DEPOSITED IN THE GENERAL FUND TO BE USED FOR GENERAL FUND EXPENDITURES AND RETAINED AS PART OF THE RESERVE REQUIRED BY SECTION 24-75-201.1 (1) (d). THE EXECUTIVE DIRECTOR MAY SELL A LEGAL INTEREST IN AS MANY ELIGIBLE STATE FACILITIES AS IS NECESSARY TO ENSURE THAT THE APPROPRIATIONS THEN IN EFFECT WILL RESULT IN THE USE OF LESS THAN

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

ONE-HALF OF THE RESERVE REQUIRED BY SECTION 24-75-201.1 (1) (d), BUT IN NO CASE SHALL THE EXECUTIVE DIRECTOR SELL A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY IF, BASED ON THE APPROPRIATIONS THEN IN EFFECT, THE NET PROCEEDS FROM SUCH SALE WOULD CAUSE THE STATUTORY RESERVE TO EXCEED THE AMOUNT REQUIRED BY SECTION 24-75-201.1 (1) (d).

**SECTION 2.** Part 11 of article 82 of title 24, Colorado Revised Statutes, is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

PART 11  
SALES OF STATE PROPERTY AND  
LEASE-PURCHASE AGREEMENTS

**24-82-1101. Definitions.** AS USED IN THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ELIGIBLE STATE FACILITY" MEANS ANY FINANCIALLY UNENCUMBERED BUILDING, STRUCTURE, OR FACILITY THAT IS OWNED BY THE STATE, INCLUDING STATE INSTITUTIONS OF HIGHER EDUCATION; EXCEPT THAT "ELIGIBLE STATE FACILITY" SHALL NOT INCLUDE THE STATE CAPITOL BUILDING.

(2) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL.

(3) "LEGAL INTEREST" MEANS A FEE SIMPLE OR LEASEHOLD INTEREST.

(4) "LESSOR" MEANS A PERSON OR AN ENTITY THAT PURCHASES A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY AND THEN ENTERS INTO A LEASE-PURCHASE AGREEMENT WITH THE STATE PURSUANT TO THIS PART 11.

(5) "PROPERTY SALE AGREEMENT" MEANS ANY WRITTEN INSTRUMENT PURSUANT TO WHICH THE EXECUTIVE DIRECTOR SELLS A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY IN EXCHANGE FOR MONETARY CONSIDERATION SPECIFIED IN SUCH INSTRUMENT.

**24-82-1102. Sale - lease-purchase agreements.** (1) (a) IN ADDITION TO ANY OTHER SALES OTHERWISE PERMITTED BY STATE LAW, ON OR BEFORE JUNE 30, 2006, THE EXECUTIVE DIRECTOR, WITH THE APPROVAL OF THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING, MAY SELL A LEGAL INTEREST IN ONE OR MORE ELIGIBLE STATE FACILITIES. THE EXECUTIVE DIRECTOR SHALL NOT SELL A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY UNLESS:

(I) THE GOVERNOR DIRECTS THE EXECUTIVE DIRECTOR TO ATTEMPT TO SELL A LEGAL INTEREST IN ONE OR MORE ELIGIBLE STATE FACILITIES PURSUANT TO SECTION 24-75-201.5 (1) (f);

(II) THE STATE WOULD RECEIVE THE PROCEEDS FROM THE PROPERTY SALE AGREEMENT PRIOR TO JUNE 30, 2006; AND

(III) SIMULTANEOUS WITH THE EXECUTION OF THE PROPERTY SALE AGREEMENT, THE STATE LEASES BACK THE SAME FACILITY PURSUANT TO A LEASE-PURCHASE

## AGREEMENT.

(b) IN ADDITION TO THE CONDITIONS SET FORTH IN PARAGRAPH (a) OF THIS SUBSECTION (1), PRIOR TO SELLING A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY THAT IS OWNED BY THE UNIVERSITY OF COLORADO, THE EXECUTIVE DIRECTOR SHALL CONSULT WITH THE CHAIRPERSON OF THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO, OR THE CHAIRPERSON'S DESIGNEE, ABOUT SUCH SALE.

(c) THE EXECUTIVE DIRECTOR, WITH THE APPROVAL OF THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING, MAY SELL A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY TO ANY NATURAL PERSON, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED PARTNERSHIP ASSOCIATION, COOPERATIVE, TRUST, LIMITED LIABILITY COMPANY, ASSOCIATION, FOR-PROFIT OR NONPROFIT CORPORATION, SPECIAL PURPOSE AUTHORITY AS DEFINED IN SECTION 24-77-102 (15), OR COMMERCIAL BANK AS A TRUSTEE.

(2) (a) THE NET PROCEEDS RECEIVED BY THE EXECUTIVE DIRECTOR FROM THE SALE OF A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL DEPOSIT THE SAME IN THE GENERAL FUND TO BE USED FOR GENERAL FUND EXPENDITURES AND RETAINED AS PART OF THE RESERVE REQUIRED BY SECTION 24-75-201.1 (1) (d). IN NO CASE SHALL THE EXECUTIVE DIRECTOR SELL A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY IF SUCH SALE WOULD EXCEED THE LIMITATION ON SUCH SALES SET FORTH IN SECTION 24-75-201.5 (1) (f) (II).

(b) ANY MONEYS RECEIVED BY THE STATE FROM THE SALE OF A LEGAL INTEREST IN AN ELIGIBLE STATE FACILITY ARE EXCLUDED FROM STATE FISCAL YEAR SPENDING FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION AND ARTICLE 77 OF THIS TITLE BECAUSE SUCH MONEYS ARE PROCEEDS FROM A PROPERTY SALE AS DEFINED IN SECTION 24-77-102 (11) OR INTEREST OR INCOME DERIVED FROM THE SALE OF PROCEEDS FROM A PROPERTY SALE.

(3) (a) (I) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO EXECUTE A LEASE-PURCHASE AGREEMENT FOR UP TO THIRTY YEARS, SUBJECT TO ANNUAL RENEWAL, FOR ANY LEGAL INTEREST IN A PROPERTY THAT THE EXECUTIVE DIRECTOR HAS SOLD PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE LEASE-PURCHASE AGREEMENT SHALL PROVIDE THAT ALL OF THE OBLIGATIONS OF THE STATE UNDER SUCH AGREEMENT SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY AND SHALL PROVIDE THAT SUCH OBLIGATIONS SHALL NOT BE DEEMED OR CONSTRUED AS CREATING AN INDEBTEDNESS OF THE STATE WITHIN THE MEANING OF ANY PROVISION OF THE STATE CONSTITUTION OR THE LAWS OF THIS STATE CONCERNING OR LIMITING THE CREATION OF INDEBTEDNESS BY THE STATE AND SHALL NOT CONSTITUTE A MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION. IN THE EVENT THE EXECUTIVE DIRECTOR DOES NOT RENEW OR THE GENERAL ASSEMBLY DOES NOT MAKE AN APPROPRIATION FOR A LEASE-PURCHASE AGREEMENT AUTHORIZED BY THIS SUBSECTION (3), THE SOLE SECURITY AVAILABLE TO THE LESSOR SHALL BE THE LEGAL INTEREST IN THE PROPERTY THAT IS THE SUBJECT OF THE LEASE-PURCHASE AGREEMENT.

(II) THE EXECUTIVE DIRECTOR SHALL NOT EXECUTE OR RENEW A LEASE-PURCHASE

AGREEMENT WITHOUT THE APPROVAL OF THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING.

(b) IF THE EXECUTIVE DIRECTOR EXECUTES OR RENEWS A LEASE-PURCHASE AGREEMENT AUTHORIZED BY THIS SUBSECTION (3) AND THE GENERAL ASSEMBLY MAKES AN APPROPRIATION FOR THE LEASE PAYMENTS, SUCH APPROPRIATION MAY BE MADE FROM ANY MONEYS IN THE STATE GENERAL FUND OR ANY OTHER LEGALLY AVAILABLE SOURCE.

(c) A LEASE-PURCHASE AGREEMENT AUTHORIZED IN SUBSECTION (1) OF THIS SECTION MAY CONTAIN SUCH TERMS, PROVISIONS, AND CONDITIONS AS THE EXECUTIVE DIRECTOR MAY DEEM APPROPRIATE, INCLUDING ALL OPTIONAL TERMS; EXCEPT THAT THE LEASE-PURCHASE AGREEMENT SHALL SPECIFICALLY AUTHORIZE THE STATE TO RECEIVE FEE TITLE OR ALL REMAINING LEASEHOLD INTERESTS TO ALL REAL PROPERTY THAT IS THE SUBJECT OF THE LEASE-PURCHASE AGREEMENT ON OR PRIOR TO THE EXPIRATION OF THE TERMS OF THE LEASE-PURCHASE AGREEMENT UPON PAYMENT OF ALL RENTALS AND OTHER AMOUNTS DUE PURSUANT TO THE TERMS OF THE LEASE-PURCHASE AGREEMENT.

(d) A LEASE-PURCHASE AGREEMENT AUTHORIZED IN THIS SUBSECTION (3) MAY PROVIDE FOR THE ISSUANCE, DISTRIBUTION, AND SALE OF INSTRUMENTS BY THE LESSOR EVIDENCING RIGHTS TO RECEIVE RENTALS AND OTHER PAYMENTS MADE AND TO BE MADE UNDER THE LEASE-PURCHASE AGREEMENT. IN THE EVENT SUCH INSTRUMENTS ARE ISSUED, DISTRIBUTED, OR SOLD, THEY SHALL BE ISSUED, DISTRIBUTED, OR SOLD BY THE LESSOR, OR ANY PERSON DESIGNATED BY THE LESSOR, AND NOT BY THE STATE AND SHALL NOT CREATE A RELATIONSHIP BETWEEN THE PURCHASERS OF SUCH INSTRUMENTS AND THE STATE OR CREATE ANY OBLIGATION ON THE PART OF THE STATE TO SAID PURCHASERS. SUCH INSTRUMENTS SHALL NOT BE NOTES, BONDS, OR ANY OTHER EVIDENCE OF INDEBTEDNESS OF THE STATE WITHIN THE MEANING OF ANY PROVISION OF THE STATE CONSTITUTION OR THE LAWS OF THIS STATE CONCERNING OR LIMITING THE CREATION OF INDEBTEDNESS OF THE STATE AND SHALL NOT CONSTITUTE A MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION.

(e) ON OR AFTER JANUARY 1, 2006, AMOUNTS REPRESENTING INTEREST PAID UNDER A LEASE-PURCHASE AGREEMENT AUTHORIZED IN SUBSECTION (1) OF THIS SECTION SHALL BE EXEMPT FROM STATE INCOME TAX.

(f) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO ENTER INTO SUCH ANCILLARY AGREEMENTS AND INSTRUMENTS AS ARE DEEMED NECESSARY OR APPROPRIATE IN CONNECTION WITH A LEASE-PURCHASE AGREEMENT, INCLUDING BUT NOT LIMITED TO GROUND LEASES, EASEMENTS, OR OTHER INSTRUMENTS RELATING TO THE REAL PROPERTY ON WHICH THE FACILITIES ARE LOCATED.

(4) THE PROVISIONS OF SECTION 24-30-202 (5) (b) SHALL NOT APPLY TO A LEASE-PURCHASE AGREEMENT AUTHORIZED IN SUBSECTION (3) OF THIS SECTION OR ANY ANCILLARY AGREEMENT ENTERED INTO PURSUANT TO PARAGRAPH (f) OF SUBSECTION (3) OF THIS SECTION. ANY PROVISION OF THE FISCAL RULES PROMULGATED PURSUANT TO SECTION 24-30-202 (1) AND (13) THAT THE STATE CONTROLLER DEEMS TO BE INCOMPATIBLE OR INAPPLICABLE WITH RESPECT TO SAID

LEASE-PURCHASE AGREEMENT OR ANY SUCH ANCILLARY AGREEMENT MAY BE WAIVED BY THE CONTROLLER OR HIS OR HER DESIGNEE.

(5) THE EXECUTIVE DIRECTOR MAY RETAIN ATTORNEYS, CONSULTANTS, OR FINANCIAL PROFESSIONALS TO THE EXTENT NECESSARY TO PROTECT THE INTERESTS OF THE STATE AND TO ENTER INTO ANY AGREEMENTS AUTHORIZED PURSUANT TO THIS SECTION. 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 PROCEEDS OF THE SALE OF ELIGIBLE STATE PROPERTY AND SHALL NOT BE PAID FROM ANY OTHER SOURCE.

(6) WITHIN THIRTY DAYS AFTER THE GOVERNOR HAS SENT A WRITTEN ORDER TO THE EXECUTIVE DIRECTOR PURSUANT TO SECTION 24-75-201.5 (1) (f) (II), THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY THAT THE PROVISIONS OF THIS SECTION HAVE BEEN TRIGGERED.

**24-82-1103. Repeal of part.** THIS PART 11 IS REPEALED, EFFECTIVE JULY 1, 2006, UNLESS THE EXECUTIVE DIRECTOR ENTERS INTO AT LEAST ONE PROPERTY SALE AGREEMENT PURSUANT TO THIS PART 11. IF THE EXECUTIVE DIRECTOR ENTERS INTO AT LEAST ONE PROPERTY SALE AGREEMENT PURSUANT TO THIS PART 11, WITHIN TEN DAYS FOLLOWING ITS EXECUTION THE EXECUTIVE DIRECTOR SHALL NOTIFY THE REVISOR OF STATUTES THAT A PROPERTY SALE AGREEMENT HAS BEEN EXECUTED AND THIS SECTION SHALL BE REPEALED, EFFECTIVE JULY 1, 2006.

**SECTION 3. 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 3, 2005