

CHAPTER 132

GOVERNMENT - STATE

HOUSE BILL 09-1218

BY REPRESENTATIVE(S) Soper, Marostica, Todd;
also SENATOR(S) Bacon, Penry.

AN ACT**CONCERNING CAPITAL LEASE AGREEMENTS ENTERED INTO BY THE STATE.**

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

SECTION 1. 24-30-201 (1) (l), Colorado Revised Statutes, is amended to read:

24-30-201. Division of accounts and control - controller. (1) The powers, duties, and functions concerning accounts and control as set forth in this part 2 shall be the responsibility of the state controller. The controller shall be appointed by the executive director of the department of personnel, subject to the provisions of section 13 of article XII of the state constitution. The controller shall be bonded in such amount as the executive director shall fix. The powers and duties of the controller shall be:

(l) To make available to each member of the general assembly by November 1 of each year a report on all capital leases having a total value of ~~fifty~~ FIVE HUNDRED thousand dollars or more, concerning real property pursuant to ~~section 24-82-102~~ and SECTIONS 24-82-102, 24-82-801, AND 24-82-1204, concerning personal property pursuant to the "Procurement Code", articles 101 to 112 of this title, AND CONCERNING LEASE PURCHASES PURSUANT TO SECTION 24-82-801. The controller shall notify, in the most cost-effective manner available, each member of the general assembly of the availability of the report and offering to provide the members with copies of the report. The controller shall require and each department and agency of the executive branch shall submit to the controller by October 1 of each year a report on capital leases having a total value of ~~fifty~~ FIVE HUNDRED thousand dollars or more, concerning real property pursuant to section 24-82-102, ~~and~~ concerning personal property pursuant to the "Procurement Code", articles 101 to 112 of this title, AND LEASE PURCHASES PURSUANT TO SECTION 24-82-801, the payments of which are financed by appropriated funds to which the department or agency is a

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

party. For the purpose of this paragraph (l), "capital lease" means ~~a lease-purchase agreement which provides an option for the state to purchase the property which is the subject thereof, at a purchase price corresponding to the principal component of the remaining lease payments under the lease-purchase agreement, if any, plus a reasonable prepayment premium, if any, and leases with option to purchase which results in the transfer of the ownership of leased property to the state by the end of the contract or lease term or the contract or lease contains an option for the state to purchase said property at less than fair market value, or which provides an option for the state to purchase the property which is the subject thereof at a purchase price which is either a fixed dollar amount or is computed on the basis of market value of the property or on any other basis which does not credit any substantial portion of lease payments made prior to exercise of the purchase option~~ A CAPITAL LEASE AS DEFINED IN THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD THAT THE CONTROLLER PRESCRIBES FOR THE STATE AS SPECIFIED IN SECTION 24-30-202 (12).

SECTION 2. 24-75-112 (1) (h), Colorado Revised Statutes, is amended to read:

24-75-112. Annual general appropriation act - headnote definitions - general provisions - footnotes. (1) As used in the annual general appropriation act, the following definitions and general provisions shall apply for the headnote terms preceding and specifying the purpose of certain line items of appropriation:

(h) "Lease purchase" means ~~the use and acquisition of equipment under an agreement to purchase, pursuant to which payments are made for a period of longer than one year and are subject to annual appropriation. "Lease purchase" may also include payments made under the agreement for the maintenance of the equipment~~ A CAPITAL LEASE AS DEFINED IN THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD THAT THE CONTROLLER PRESCRIBES FOR THE STATE AS SPECIFIED IN SECTION 24-30-202 (12).

SECTION 3. 24-82-102 (1) (b), (1) (c), (1) (d), and (1) (e), Colorado Revised Statutes, are amended, and the said 24-82-102 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

24-82-102. State authorized to acquire property - disposition. (1) (b) Any lease-purchase agreement that is entered into ~~subsequent to June 12, 1981, shall be specifically authorized, prior to its execution, by a bill, other than the annual general appropriations bill or a supplemental appropriations bill, enacted by the general assembly, except that a lease-purchase agreement that is entered into by the executive director of the department of personnel pursuant to section 24-82-1102 shall not require such authorization. Subsequent to authorization by the general assembly in such manner, rentals and other payments by the state under any such lease-purchase agreement may be made from moneys appropriated by the general assembly in an annual general appropriations bill or a supplemental appropriations bill~~ PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 24-82-801.

(c) ~~A lease-purchase agreement entered into pursuant to the provisions of this section shall mean a lease for real property containing a provision under which the~~

~~state is entitled to receive fee title to said real property at the end of the lease 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. 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.~~

~~(d) Any lease-purchase agreement entered into pursuant to the provisions of this section, whereunder the obligations of the state are specifically made subject to the action of the general assembly in annually appropriating moneys of the state for all payments and the performance of all obligations of the state thereunder during the fiscal year following such appropriation, shall not be deemed or construed as creating an 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.~~

~~(e) Nothing contained in this section shall be construed or interpreted as invalidating or validating any lease-purchase agreement executed prior to June 12, 1981.~~

~~(f) AS USED IN THIS SECTION, "LEASE-PURCHASE AGREEMENT" MEANS A CAPITAL LEASE AS DEFINED IN THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD THAT THE CONTROLLER PRESCRIBES FOR THE STATE AS SPECIFIED IN SECTION 24-30-202 (12).~~

SECTION 4. 24-82-701, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-82-701. Definitions. As used in this part 7, unless the context otherwise requires:

(3.5) "LEASE PURCHASE" MEANS A CAPITAL LEASE AS DEFINED IN THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD THAT THE CONTROLLER PRESCRIBES FOR THE STATE AS SPECIFIED IN SECTION 24-30-202 (12).

SECTION 5. 24-82-702 (1), Colorado Revised Statutes, is amended to read:

24-82-702. Lease-purchase agreements. (1) If the director determines that the state will realize economic or other benefits by revising or replacing existing lease-purchase agreements, or by entering into additional lease-purchase agreements, or by combining all or any portion of existing or additional lease-purchase agreements authorized by appropriations made by the general assembly, the director may develop a master lease program and execute such agreements. Any additional lease-purchase agreement executed by the director pursuant to this part 7 may include personal property which is the subject of an existing lease-purchase agreement or personal property for which an appropriation has been made by the general assembly for the fiscal year commencing July 1, 1987, and any fiscal year thereafter. An additional lease-purchase agreement executed by

the director pursuant to this part 7 may include real property only if the initial acquisition of such property by means of a lease-purchase agreement was specifically authorized by a separate bill enacted by the general assembly pursuant to ~~section 24-82-102(1)(b)~~ SECTION 24-82-801. For the purposes of this subsection (1), appropriations made by the general assembly do not include continuing appropriations made by permanent statute.

SECTION 6. 24-82-801, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

24-82-801. Lease-purchase agreements for acquisition of real or personal property. (1) (a) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, NO LEASE-PURCHASE AGREEMENT FOR REAL PROPERTY THAT REQUIRES TOTAL PAYMENTS EXCEEDING FIVE HUNDRED THOUSAND DOLLARS OVER THE TERM OF THE AGREEMENT SHALL BE ENTERED INTO UNLESS SUCH AGREEMENT IS SPECIFICALLY AUTHORIZED, PRIOR TO ITS EXECUTION, BY A BILL ENACTED BY THE GENERAL ASSEMBLY, OTHER THAN THE ANNUAL GENERAL APPROPRIATION ACT OR A SUPPLEMENTAL APPROPRIATION ACT.

(b) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, NO LEASE-PURCHASE AGREEMENT FOR PERSONAL PROPERTY THAT REQUIRES TOTAL PAYMENTS EXCEEDING FIVE HUNDRED THOUSAND DOLLARS OVER THE TERM OF THE AGREEMENT SHALL BE ENTERED INTO UNLESS SUCH AGREEMENT IS SPECIFICALLY AUTHORIZED, PRIOR TO ITS EXECUTION, BY A BILL ENACTED BY THE GENERAL ASSEMBLY, OTHER THAN THE ANNUAL GENERAL APPROPRIATION ACT OR A SUPPLEMENTAL APPROPRIATION ACT, OR SPECIFICALLY AUTHORIZED BY APPROPRIATION IN THE ANNUAL GENERAL APPROPRIATION ACT OR A SUPPLEMENTAL APPROPRIATION ACT.

(c) SUBSEQUENT TO THE GENERAL ASSEMBLY'S AUTHORIZATION OF A LEASE-PURCHASE AGREEMENT AS SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (1), RENTALS AND OTHER PAYMENTS BY THE STATE UNDER ANY SUCH LEASE-PURCHASE AGREEMENT MAY BE MADE FROM MONEYS APPROPRIATED BY THE GENERAL ASSEMBLY AS A SEPARATE LINE ITEM IN THE CAPITAL CONSTRUCTION OR OPERATING SECTION OF AN ANNUAL GENERAL APPROPRIATION ACT OR A SUPPLEMENTAL APPROPRIATION ACT.

(2) EXCEPT AS PROVIDED IN SUBSECTION (6) OF THIS SECTION, LEASE-PURCHASE AGREEMENTS THAT REQUIRE TOTAL PAYMENTS OF FIVE HUNDRED THOUSAND DOLLARS OR LESS OVER THE TERM OF THE AGREEMENT SHALL REQUIRE AN APPROPRIATION BY THE GENERAL ASSEMBLY IN AN ANNUAL GENERAL APPROPRIATION ACT OR A SUPPLEMENTAL APPROPRIATION ACT.

(3) A LEASE-PURCHASE AGREEMENT THAT REQUIRES TOTAL PAYMENTS IN EXCESS OF FIVE HUNDRED THOUSAND DOLLARS OVER THE TERM OF THE AGREEMENT SHALL REQUIRE, PRIOR TO ITS EXECUTION, APPROVAL BY THE STATE CONTROLLER AS AUTHORIZED BY SECTION 24-30-202.

(4) AS USED IN THIS SECTION, "LEASE-PURCHASE AGREEMENT" MEANS A CAPITAL LEASE AS DEFINED IN THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD THAT THE CONTROLLER

PRESCRIBES FOR THE STATE AS SPECIFIED IN SECTION 24-30-202 (12).

(5) A LEASE-PURCHASE AGREEMENT MAY FURTHER PROVIDE FOR THE ISSUANCE, DISTRIBUTION, AND SALE OF INSTRUMENTS EVIDENCING RIGHTS TO RECEIVE RENTALS AND OTHER PAYMENTS MADE BY THE STATE, BUT ONLY IF THE LEASE-PURCHASE AGREEMENT INCLUDES A PROVISION THAT PAYMENTS MADE BY THE STATE ARE SUBJECT TO ANNUAL APPROPRIATION. A LEASE-PURCHASE AGREEMENT 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.

(6) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE DEPARTMENT OF TRANSPORTATION, INSTITUTIONS OF HIGHER EDUCATION, AND THE STATE TREASURER MAY ENTER INTO LEASE-PURCHASE AGREEMENTS PROVIDED THAT THE STATE CONTROLLER AS AUTHORIZED BY SECTION 24-30-202 APPROVES EACH LEASE-PURCHASE AGREEMENT THAT REQUIRES TOTAL PAYMENTS IN EXCESS OF FIVE HUNDRED THOUSAND DOLLARS OVER THE TERM OF THE AGREEMENT OR AS OTHERWISE PROVIDED BY LAW.

(7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR ANY CONTRACT OR INSTRUMENT IN EXISTENCE ON JULY 1, 2009, IF THE CONTRACT WAS VALIDLY ENTERED INTO OR THE INSTRUMENT WAS VALIDLY ISSUED UNDER THE LAW IN EFFECT AT THE TIME OF ENTERING INTO SAID CONTRACT OR ISSUING SAID INSTRUMENT.

SECTION 7. 24-82-1204, Colorado Revised Statutes, is amended to read:

24-82-1204. Terms and conditions of lease agreements. (1) A lease agreement entered into pursuant to the provisions of this part 12 may contain such terms, provisions, and conditions as the executive director of the leasing state department or the governing board of the leasing institution may deem appropriate. ~~A lease agreement entered into pursuant to the provisions of this part 12 may provide an option for the state to purchase the property which is the subject of the lease prior to the termination of the lease agreement.~~ ANY LEASE AGREEMENT ENTERED INTO PURSUANT TO THIS PART 12 SHALL COMPLY WITH THE REQUIREMENTS OF SECTION 24-82-801.

(2) AS USED IN THIS SECTION, "LEASE AGREEMENT" MEANS A CAPITAL LEASE AS DEFINED IN THE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD THAT THE CONTROLLER PRESCRIBES FOR THE STATE AS SPECIFIED IN SECTION 24-30-202 (12).

SECTION 8. 29-1-103 (3) (c), Colorado Revised Statutes, is amended to read:

29-1-103. Budgets required. (3) (c) As used in this subsection (3), "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 title to the property is transferred at the end of the term for nominal or no additional consideration~~ A CAPITAL LEASE AS DEFINED IN THE GENERALLY ACCEPTED

ACCOUNTING PRINCIPLES ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD THAT THE CONTROLLER PRESCRIBES FOR THE STATE AS SPECIFIED IN SECTION 24-30-202 (12), C.R.S.

SECTION 9. 23-15-107 (1) (g), Colorado Revised Statutes, is amended to read:

23-15-107. General powers of the authority. (1) In addition to any other powers granted to the authority by this article, the authority shall have the following powers:

(g) To lease to a participating institution of postsecondary education or cultural institution any or all of the facilities upon such terms and conditions as the authority shall deem proper, including, but not limited to, renewable, one-year leases with institutions of postsecondary education supported in whole or in part by state funds if authorized pursuant to section 23-1-106 or section 24-82-709, C.R.S., or a lease-purchase agreement authorized pursuant to sections 24-82-102 (1) (b) ~~and 24-82-801 (2)~~ AND 24-82-801, C.R.S.; to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, provisions that the lessee thereof shall have options to renew the term of the lease for such period or periods, at such rent, and upon such terms or conditions as shall be determined by the authority or to purchase any or all of the facilities or to include, if desired, provisions that, upon payment of all of the indebtedness incurred by the authority for the financing of such facilities, the authority will convey any or all of the facilities to the lessee or lessees thereof with or without consideration;

SECTION 10. 24-30-2003 (4), Colorado Revised Statutes, is amended to read:

24-30-2003. Utility cost-savings contracts. (4) The legislative authorization required by ~~section 24-82-801 (2)~~ SECTION 24-82-801 (1) shall not apply to a lease-purchase agreement in a utility cost-savings contract and no subsequent legislative authorization shall be required for any payment made pursuant to such an agreement.

SECTION 11. Effective date - applicability. This act shall take effect July 1, 2009, and shall apply to lease-purchase agreements entered into on or after said date.

SECTION 12. 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: April 16, 2009