

CHAPTER 410

GOVERNMENT - STATE

SENATE BILL 10-207

BY SENATOR(S) Johnston and Romer, Foster, Gibbs, Hudak, Schwartz, Steadman, Whitehead, Williams;
also REPRESENTATIVE(S) Tyler and Levy, Apuan, Court, Fischer, Frangas, Gagliardi, Hullinghorst, Kefalas, Kerr A.,
McFadyen, Merrifield, Middleton, Pace, Pommer, Primavera, Riesberg.

AN ACT

CONCERNING AUTHORIZATION FOR THE STATE TREASURER TO ENTER INTO LEASE-PURCHASE AGREEMENTS ON BEHALF OF THE STATE TO FINANCE CAPITAL CONSTRUCTION PROJECTS PROPOSED BY THE GOVERNOR'S ENERGY OFFICE THAT IMPROVE THE ENERGY EFFICIENCY OF STATE CAPITAL FACILITIES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. Article 38.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-38.5-106. Financing of capital projects to make state government more energy efficient - lease-purchase agreements - legislative declaration - definition. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "UTILITY COST-SAVINGS CONTRACT" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 24-30-2001 (6).

(2) (a) IN ORDER TO MAKE STATE GOVERNMENT MORE ENERGY EFFICIENT IN ACCORDANCE WITH SECTION 24-38.5-102, THE GOVERNOR'S ENERGY OFFICE MAY PROPOSE A PRIORITIZED LIST OF PROJECTS ASSOCIATED WITH CURRENT UTILITY COST-SAVINGS CONTRACTS THAT WILL IMPROVE THE ENERGY EFFICIENCY OF STATE BUILDINGS OR FACILITIES AND THAT ARE PROPOSED TO BE CONSTRUCTED OR IMPROVED USING FINANCING PROVIDED IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION. IF THE GOVERNOR'S ENERGY OFFICE CREATES A PRIORITIZED LIST, THE PRIORITIZED LIST SHALL INCLUDE AN ESTIMATE OF THE TOTAL AMOUNT OF ANNUAL UTILITY COST SAVINGS EXPECTED IF ALL OF THE PROJECTS ON THE PRIORITIZED LIST ARE COMPLETED; DESCRIPTIONS OF THE PROJECTS, THE AFFECTED BUILDINGS, AND THE IMPACT OF THE PROJECTS ON TENANTS; A TIMELINE FOR IMPLEMENTATION; A DETAILED BUDGET FOR EACH PROJECT; A LIST OF PROPERTIES RECOMMENDED FOR

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

USE AS COLLATERAL, WHICH SHALL INCLUDE ONLY PROPERTIES OPERATED AND MAINTAINED BY AGENCIES THAT ARE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF AT LEAST ONE STATE BUILDING OR FACILITY FOR WHICH A PROJECT IS BEING FINANCED IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION; ESTIMATES OF THE AMOUNT OF ANNUAL UTILITY COST SAVINGS EXPECTED FOR EACH OF THE PROJECTS; AND EXPECTED ANNUAL PAYMENTS FOR EACH PROJECT, INCLUDING THE EXPECTED FUNDING SOURCES FOR SUCH PAYMENTS. THE GOVERNOR'S ENERGY OFFICE SHALL SUBMIT THE PRIORITIZED LIST AND REFERENCED SUPPORTING DOCUMENTS TO THE OFFICE OF STATE PLANNING AND BUDGETING FOR REVIEW AND APPROVAL OR DISAPPROVAL. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), THE OFFICE OF STATE PLANNING AND BUDGETING SHALL SUBMIT ANY PROJECTS ON THE PRIORITIZED LIST THAT IT APPROVES TO THE CAPITAL DEVELOPMENT COMMITTEE OF THE GENERAL ASSEMBLY FOR REVIEW AND APPROVAL OR DISAPPROVAL. SUBJECT TO THE LIMITATIONS SPECIFIED IN SUBSECTION (3) OF THIS SECTION, IF THE CAPITAL DEVELOPMENT COMMITTEE DETERMINES AFTER REVIEWING THE PROJECTS SUBMITTED TO IT FOR ITS REVIEW AND APPROVAL OR DISAPPROVAL THAT IT IS APPROPRIATE TO AUTHORIZE THE STATE TREASURER TO PURSUE FINANCING PROVIDED IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION TO FUND SOME OR ALL OF THE PROJECTS OR IF THE OFFICE OF STATE PLANNING AND BUDGETING HAS APPROVED PROJECTS FOR BUILDINGS OR FACILITIES OPERATED AND MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION AND SUBMITTED SUCH PROJECTS TO THE COMMITTEE FOR INFORMATIONAL PURPOSES ONLY PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2), THE COMMITTEE SHALL PROVIDE A LETTER TO THE GOVERNOR'S ENERGY OFFICE, THE OFFICE OF STATE PLANNING AND BUDGETING, THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY, AND THE STATE TREASURER THAT SPECIFIES THE FINAL APPROVED PRIORITY OF THE PROJECTS.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (2), ANY PROJECTS ON THE PRIORITIZED LIST PROPOSED BY THE GOVERNOR'S ENERGY OFFICE AND APPROVED BY THE OFFICE OF STATE PLANNING AND BUDGETING FOR BUILDINGS OR FACILITIES OPERATED AND MAINTAINED BY THE DEPARTMENT OF TRANSPORTATION SHALL BE DEEMED TO BE FINALLY APPROVED AND SHALL BE INCLUDED ON THE PRIORITIZED LIST SUBMITTED TO THE CAPITAL DEVELOPMENT COMMITTEE FOR INFORMATIONAL PURPOSES ONLY.

(3) (a) UPON RECEIPT OF THE LETTER FROM THE CAPITAL DEVELOPMENT COMMITTEE REGARDING ITS REVIEW PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE STATE TREASURER MAY ENTER INTO ONE OR MORE LEASE-PURCHASE AGREEMENTS ON BEHALF OF THE STATE IN ORDER TO GENERATE THE PROCEEDS NEEDED TO COMPLETE THE PROJECTS. A LEASE-PURCHASE AGREEMENT:

(I) MAY BE ENTERED INTO WITH ANY FOR-PROFIT OR NONPROFIT CORPORATION, TRUST, OR COMMERCIAL BANK AS A TRUSTEE, AS LESSOR;

(II) SHALL BE LIMITED TO A TOTAL PAR VALUE, INCLUDING COSTS OF ISSUANCE, OF ALL SUCH INSTRUMENTS ISSUED, DISTRIBUTED, AND SOLD OF NO MORE THAN SEVENTY-THREE MILLION DOLLARS;

(III) SHALL INCLUDE PROVISIONS THAT:

(A) SPECIFY THAT ALL PAYMENT OBLIGATIONS OF THE STATE UNDER THE LEASE-PURCHASE AGREEMENT ARE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY AND THAT 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 THE STATE CONCERNING OR LIMITING THE CREATION OF INDEBTEDNESS BY THE STATE;

(B) INDICATE THAT IF THE STATE DOES NOT RENEW THE AGREEMENT, THE SOLE SECURITY AVAILABLE TO THE LESSOR SHALL BE THE PROPERTY THAT IS THE SUBJECT OF THE NONRENEWED AGREEMENT; AND

(C) ALLOW THE STATE TO RECEIVE TITLE TO THE REAL AND PERSONAL PROPERTY THAT IS THE SUBJECT OF THE AGREEMENT ON OR PRIOR TO THE EXPIRATION OF THE ENTIRE TERM OF THE AGREEMENT, INCLUDING ALL OPTIONAL RENEWAL TERMS;

(IV) MAY INCLUDE:

(A) PROVISIONS FOR THE ISSUANCE, DISTRIBUTION, AND SALE OF INSTRUMENTS EVIDENCING RIGHTS TO RECEIVE RENTALS AND OTHER PAYMENTS MADE AND TO BE MADE UNDER THE AGREEMENT. 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 THE STATE CONCERNING OR LIMITING THE CREATION OF INDEBTEDNESS BY THE STATE.

(B) SUCH OTHER TERMS, PROVISIONS, AND CONDITIONS AS THE STATE TREASURER MAY DEEM APPROPRIATE.

(b) ONLY A BUILDING OR FACILITY SUBJECT TO AN ENERGY PERFORMANCE CONTRACT, AS DEFINED IN SECTION 24-30-2001 (1), THAT IS UNDER CONSIDERATION BY THE OFFICE OF THE STATE ARCHITECT AS OF THIRTY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS PARAGRAPH (b), MAY BE THE SUBJECT OF A LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE STATE TREASURER PURSUANT TO THIS SUBSECTION (3).

(c) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER, MAY ENTER INTO ANCILLARY AGREEMENTS AND INSTRUMENTS DEEMED NECESSARY OR APPROPRIATE IN CONNECTION WITH A LEASE-PURCHASE AGREEMENT AUTHORIZED PURSUANT TO THIS SUBSECTION (3), INCLUDING BUT NOT LIMITED TO DEEDS, LEASES, SUBLEASES, EASEMENTS, OR OTHER INSTRUMENTS RELATING TO THE REAL PROPERTY ON WHICH THE FACILITIES ARE LOCATED.

(d) THE PROVISIONS OF SECTION 24-30-202 (5) (b) SHALL NOT APPLY TO A LEASE-PURCHASE AGREEMENT OR ANY ANCILLARY AGREEMENT OR INSTRUMENT AUTHORIZED PURSUANT TO THIS SUBSECTION (3). 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 SUCH A LEASE-PURCHASE AGREEMENT OR ANCILLARY AGREEMENT OR INSTRUMENT MAY BE WAIVED BY THE CONTROLLER OR HIS OR HER DESIGNEE WITHIN THE OFFICE OF THE STATE CONTROLLER.

(e) INTEREST PAID UNDER A LEASE-PURCHASE AGREEMENT, INCLUDING INTEREST

REPRESENTED BY SUCH INSTRUMENTS, SHALL BE EXEMPT FROM STATE INCOME TAX.

(f) NOTWITHSTANDING THE AUTHORITY OF THE CAPITAL DEVELOPMENT COMMITTEE OF THE GENERAL ASSEMBLY TO AUTHORIZE, AFTER APPROVAL BY THE OFFICE OF STATE PLANNING AND BUDGETING, 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 (3).

(g) THE STATE TREASURER SHALL COORDINATE WITH THE OFFICE OF STATE PLANNING AND BUDGETING IN REGARD TO THE SCHEDULE OF LEASE PAYMENTS REQUIRED IN CONNECTION WITH ANY LEASE-PURCHASE AGREEMENT.

(h) ONCE A LEASE-PURCHASE AGREEMENT HAS BEEN EXECUTED, THE STATE TREASURER SHALL SUBMIT THE SCHEDULE FOR ANNUAL PAYMENTS TO THE OFFICE OF STATE PLANNING AND BUDGETING AND THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY. THE OFFICE OF STATE PLANNING AND BUDGETING SHALL SUBMIT A BUDGET REQUEST TO THE JOINT BUDGET COMMITTEE TO REDUCE ANY CORRESPONDING OPERATING APPROPRIATIONS FOR STATE CAPITAL FACILITIES REALIZING UTILITY COST SAVINGS FROM PROJECTS FINANCED BY LEASE-PURCHASE AGREEMENTS AND TO APPROPRIATE ANNUAL PAYMENTS IN THE CAPITAL CONSTRUCTION SECTION OF THE BUDGET FOR THOSE FACILITIES FOR WHICH OPERATION AND MAINTENANCE IS FUNDED IN WHOLE OR IN PART WITH MONEYS THAT ARE SUBJECT TO STATE APPROPRIATION. UPON RECEIPT OF THE BUDGET REQUEST FROM THE OFFICE OF STATE PLANNING AND BUDGETING, THE JOINT BUDGET COMMITTEE SHALL RECOMMEND TO THE GENERAL ASSEMBLY AN APPROPRIATION FOR ANNUAL PAYMENTS IN THE CAPITAL CONSTRUCTION SECTION OF THE BUDGET AND A REDUCTION OF THE SAME AMOUNT IN THE APPLICABLE UTILITIES LINE ITEM OF THE OPERATING BUDGET. THE OFFICE OF STATE PLANNING AND BUDGETING AND THE JOINT BUDGET COMMITTEE RECOMMENDATION SHALL ALSO INCLUDE AN APPROPRIATION OF THE ORIGINAL FUNDING SOURCES OF THE UTILITY LINE ITEM EQUAL TO THE IDENTIFIED SAVINGS FOR TRANSFER TO THE ENERGY EFFICIENCY PROJECT PROCEEDS FUND CREATED IN SUBSECTION (4) OF THIS SECTION UNLESS SUCH TRANSFER IS PROHIBITED BY THE REQUIREMENTS OF THE ORIGINAL FUNDING SOURCE. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE UTILITIES LINE ITEM REDUCTION BE PERMANENT, AND THAT ANY FUTURE APPROPRIATED INCREASES BE DEFENDED IN RELATION TO THE BALANCE FOR UTILITIES THAT REMAIN IN THE LINE.

(4) THE ENERGY EFFICIENCY PROJECT PROCEEDS FUND IS HEREBY CREATED IN THE STATE TREASURY. THE PRINCIPAL OF THE FUND SHALL CONSIST OF MONEYS RECEIVED BY THE STATE IN CONNECTION WITH ANY LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SUBSECTION (3) OF THIS SECTION AND ANY OTHER LEGALLY AVAILABLE MONEYS THAT MAY BE APPROPRIATED OR TRANSFERRED TO THE FUND. ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. MONEYS IN THE FUND

THAT WERE RECEIVED BY THE STATE IN CONNECTION WITH ANY LEASE-PURCHASE AGREEMENT AND THAT ARE TRUSTEE FUNDS MAY BE EXPENDED BY THE STATE TREASURER, AND OTHER MONEYS IN THE FUND NOT IDENTIFIED FOR FUNDING ANNUAL PAYMENTS OR TO BE USED TO DEFRAY ANY INCREMENTAL COSTS INCURRED BY THE STATE CONTROLLER IN MANAGING ACCOUNTING AND REPORTING REQUIREMENTS RELATED TO LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SUBSECTION (3) OF THIS SECTION ARE HEREBY CONTINUOUSLY APPROPRIATED TO THE STATE TREASURER, FOR THE PURPOSE OF MAKING DISBURSEMENTS NECESSARY TO COMPLETE PROJECTS ASSOCIATED WITH CURRENT UTILITY COST-SAVINGS CONTRACTS THAT ARE AUTHORIZED TO BE FINANCED THROUGH LEASE-PURCHASE AGREEMENTS ENTERED INTO BY THE STATE TREASURER ON BEHALF OF THE STATE PURSUANT TO SUBSECTION (3) OF THIS SECTION. MONEYS IN THE FUND SHALL ALSO BE SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON AND DEFRAYING ANY INCREMENTAL COSTS INCURRED BY THE STATE CONTROLLER IN MANAGING ACCOUNTING AND REPORTING REQUIREMENTS RELATED TO SUCH LEASE-PURCHASE AGREEMENTS.

SECTION 2. 24-30-2001 (1) (b) and (7) (o), Colorado Revised Statutes, are amended to read:

24-30-2001. Definitions. As used in this part 20, unless the context otherwise requires:

(1) "Energy performance contract" means a contract for evaluations, recommendations, or implementation of one or more utility cost-savings measures designed to produce utility cost savings or operation and maintenance cost savings, which contract:

(b) Provides that the amount of actual savings for each year during the contract period shall exceed annual contract payments, including maintenance costs, to be made during such year by the state agency contracting for the utility cost-savings measures; except that, FOR THE PURPOSES OF THIS PART 20 ONLY, THE TERM "ANNUAL CONTRACT PAYMENTS" DOES NOT INCLUDE MONEYS RECEIVED BY THE STATE FROM REBATES, GIFTS, GRANTS, OR DONATIONS SPECIFICALLY DESIGNATED BY THE GIFTING, GRANTING, OR DONATING PARTY FOR THE DESIGN OR IMPLEMENTATION OF A UTILITY COST-SAVINGS MEASURE OR STATE MONEYS THAT HAVE BEEN SPECIFICALLY APPROPRIATED IN A DISTINCT LINE ITEM, OR, IN THE CASE OF THE DEPARTMENT OF TRANSPORTATION, OTHERWISE SET ASIDE IN THE DEPARTMENT'S BUDGET, FOR THE DESIGN OR IMPLEMENTATION OF A UTILITY COST-SAVINGS MEASURE THAT IS WHOLLY ADDRESSED WITHIN THE SCOPE OF THE UTILITY COST-SAVINGS CONTRACT.

(7) "Utility cost-savings measure" means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

(o) Any other LOCATION, ORIENTATION, OR DESIGN CHOICE RELATED TO, OR installation, modification of installation, or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes.

SECTION 3. 24-30-2003 (1) (a), Colorado Revised Statutes, is amended to read:

24-30-2003. Utility cost-savings contracts. (1) A state agency may enter into a utility cost-savings contract with any person or entity experienced in the design and implementation of utility cost-savings measures for buildings or other facilities or with the entity or person who performed the energy analysis and recommendations pursuant to section 24-30-2002 if:

(a) The energy analysis and recommendations made pursuant to section 24-30-2002 indicate that the expected annual CONTRACT payments required under the UTILITY COST-SAVINGS contract and any additional maintenance costs for one or more utility cost-savings measures are expected to be equal to or less than the sum of the utility cost savings and operation and maintenance cost savings achieved by the implementation of such measures on an annual basis; and

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the energy efficiency project proceeds fund created in section 24-38.5-106 (4), Colorado Revised Statutes, not otherwise appropriated, to the department of personnel and administration, for allocation to the division of accounts and control - controller, for the fiscal year beginning July 1, 2010, the sum of twenty thousand nine hundred dollars (\$20,900) cash funds and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

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 10, 2010