

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 01-0890.01 Julie Pelegrin

HOUSE BILL 01-1360

HOUSE SPONSORSHIP

Lawrence, Larson, and Miller

SENATE SPONSORSHIP

Phillips

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE MASTER LEASE PROGRAM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Capital Development Committee. Effective July 1, 2001, replaces the state officials currently serving as the board of directors for the nonprofit corporation created to act as the lessor on lease-purchase agreements with the state with 5 persons appointed by said officials. Requires the corporation's bylaws to include provisions specifying procedures for appointment and replacement of the directors. Specifies qualifications for the persons initially appointed to serve on the board of directors.

Repeals language prohibiting the issuance of certificates of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
March 27, 2001

HOUSE
Amended 2nd Reading
March 26, 2001

participation prior to receipt of a court decision upholding the constitutionality of such instruments. Clarifies that such instruments may be issued only by the nonprofit corporation created to act as the lessor for the master-lease program and do not constitute an obligation of the state nor a multiple-fiscal year financial obligation for purposes of section 20 (4) of article X of the state constitution. Clarifies that any lease-purchase agreement entered into by the state shall not constitute a multiple-fiscal year financial obligation for purposes of section 20 (4) of article X of the state constitution.

When specifically authorized by bill, allows an agency that has statutory authority to enter into lease-purchase agreements to enter into such agreements in cooperation with the nonprofit corporation without participation by the executive director of the department of personnel. Clarifies that any such lease-purchase agreements shall be subject to the provisions of the master lease program.

Makes conforming amendments.

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

2 **SECTION 1.** 24-82-703, Colorado Revised Statutes, is amended
3 to read:

4 **24-82-703. Lessor.** (1) (a) The lessor under any additional
5 lease-purchase agreement entered into by the director pursuant to the
6 provisions of this part 7 shall be a nonprofit corporation organized for the
7 purpose of becoming a lessor pursuant to the provisions of this part 7.
8 PRIOR TO JULY 1, 2001, the controller, the director of the office of state
9 planning and budgeting, and the director of research of the legislative
10 council shall serve ex officio as directors of such nonprofit corporation.
11 The participation of such nonprofit corporation, and of the controller, the
12 director of the office of state planning and budgeting, and the director of
13 research of the legislative council, acting as directors of such nonprofit
14 corporation, shall not constitute a potential conflicting interest, as such
15 term is defined in section 18-8-308 (2), C.R.S.

16 (b) EFFECTIVE JULY 1, 2001, THE CONTROLLER, THE DIRECTOR OF

1 THE OFFICE OF STATE PLANNING AND BUDGETING, AND THE DIRECTOR OF
2 RESEARCH OF THE LEGISLATIVE COUNCIL SHALL CEASE ACTING AS THE
3 BOARD OF DIRECTORS FOR THE NONPROFIT CORPORATION. PRIOR TO SAID
4 DATE, SUCH OFFICIALS SHALL APPOINT FIVE PERSONS TO SERVE AS THE
5 BOARD OF DIRECTORS FOR THE NONPROFIT CORPORATION, WHICH PERSONS
6 SHALL TAKE OFFICE JULY 1, 2001. THE TERMS OF THE DIRECTORS OF THE
7 NONPROFIT CORPORATION, THE PROCEDURES FOR APPOINTMENT OF
8 DIRECTORS AND FOR FILLING VACANCIES, AND ANY OTHER NECESSARY
9 PROVISIONS REGARDING THE BOARD OF DIRECTORS SHALL BE SPECIFIED IN
10 THE BYLAWS OF THE NONPROFIT CORPORATION.

11 (c) IN APPOINTING THE BOARD OF DIRECTORS, THE CONTROLLER,
12 THE DIRECTOR OF THE OFFICE OF STATE PLANNING AND BUDGETING, AND
13 THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL SHALL SELECT
14 PERSONS WHO ARE COLORADO RESIDENTS AND HAVE EXPERIENCE IN
15 FINANCE, REAL ESTATE, OR LEASING AND WHO ARE NOT OFFICIALS OR
16 EMPLOYEES OF THE STATE.

17 ~~(2) On and after June 9, 1993, the powers of the nonprofit~~
18 ~~corporation shall be limited to the refinancing of instruments issued~~
19 ~~pursuant to the provisions of this part 7 on or before November 3, 1992,~~
20 ~~unless and until a court of competent jurisdiction enters a final decision~~
21 ~~as to the constitutionality of the issuance of certificates of participation or~~
22 ~~other instruments evidencing the commitment of a district to make~~
23 ~~payments in subsequent fiscal years of moneys due under a contract for~~
24 ~~the purchase or lease of property, real or personal, even if such~~
25 ~~commitment of funds is expressly made contingent upon funds for that~~
26 ~~purpose being appropriated, budgeted, or otherwise made available.~~
27 Nothing in the repeal of other sections of this part 7 shall be construed to

1 impair any contract or instrument in existence on November 3, 1992, if
2 said contract was validly entered into or said instrument was validly
3 issued under the law in effect at the time of entering into said contract or
4 issuing said instrument.

5 (3) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

6 (a) THE NONPROFIT CORPORATION ORGANIZED FOR THE PURPOSE OF
7 BECOMING A LESSOR PURSUANT TO THE PROVISIONS OF THIS PART 7 IS A
8 PRIVATE, NONPROFIT CORPORATION AND IS NOT A PART OF STATE
9 GOVERNMENT OR OF ANY LOCAL GOVERNMENT;

10 (b) ANY LEASE-PURCHASE AGREEMENT ENTERED INTO BY THE
11 STATE WITH THE LESSOR PURSUANT TO THIS PART 7 IS SUBJECT TO ANNUAL
12 RENEWAL BY THE STATE AND IS SECURED BY THE PROPERTY THAT IS THE
13 SUBJECT OF THE LEASE-PURCHASE AGREEMENT;

14 (c) IN THE EVENT THE STATE CHOOSES NOT TO RENEW ANY
15 LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO THIS PART 7,
16 THE LESSOR'S SOLE RECOURSE AGAINST THE STATE IS TO RECOVER OR
17 POSSESS THE PROPERTY LEASED TO THE STATE PURSUANT TO THE
18 LEASE-PURCHASE AGREEMENT AND TO RECEIVE ANY MONEYS
19 APPROPRIATED BY THE GENERAL ASSEMBLY FOR PAYMENT OF MONEYS
20 OWED UNDER THE LEASE-PURCHASE AGREEMENT BUT NOT YET PAID FOR
21 THE STATE FISCAL YEAR IN WHICH THE STATE CHOOSES NOT TO RENEW THE
22 LEASE-PURCHASE AGREEMENT;

23 (d) ANY INSTRUMENTS ISSUED, DISTRIBUTED, OR SOLD EVIDENCING
24 RIGHTS TO RECEIVE RENTALS AND OTHER PAYMENTS MADE OR TO BE MADE
25 UNDER A LEASE-PURCHASE AGREEMENT ENTERED INTO PURSUANT TO THIS
26 PART 7 ARE ISSUED, DISTRIBUTED, OR SOLD BY THE LESSOR AND NOT BY
27 THE STATE AND DO NOT CREATE A RELATIONSHIP BETWEEN THE

1 PURCHASERS OF SUCH INSTRUMENTS AND THE STATE OR CREATE ANY
2 OBLIGATION ON THE PART OF THE STATE TO SAID PURCHASERS;

3 (e) SAID INSTRUMENTS, BECAUSE THEY ARE ISSUED BY THE LESSOR
4 AND DO NOT REPRESENT AN OBLIGATION FROM THE STATE TO THE
5 PURCHASERS OF SAID INSTRUMENTS, DO NOT CONSTITUTE A
6 MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DISTRICT DEBT OR OTHER
7 FINANCIAL OBLIGATION AND THEREFORE ARE NOT SUBJECT TO THE
8 PROVISIONS OF SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION.

9 **SECTION 2.** Part 7 of article 82 of title 24, Colorado Revised
10 Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

11 **24-82-703.5. Lease-purchase agreements - other state agencies**
12 **- authority.** NOTWITHSTANDING ANY PROVISION OF THIS PART 7 TO THE
13 CONTRARY, A STATE AGENCY THAT HAS GENERAL STATUTORY AUTHORITY
14 TO ENTER INTO AGREEMENTS UNDER WHICH THE STATE MAY ACQUIRE TITLE
15 TO REAL AND PERSONAL PROPERTY MAY WORK DIRECTLY WITH THE
16 NONPROFIT CORPORATION CREATED PURSUANT TO SECTION 24-82-703 TO
17 ENTER INTO SUCH AGREEMENTS WHEN SPECIFICALLY AUTHORIZED BY A
18 SEPARATE BILL ENACTED BY THE GENERAL ASSEMBLY PURSUANT TO
19 SECTION 24-82-102 (1) (b). ANY SUCH TRANSACTION SHALL NOT REQUIRE
20 THE ASSISTANCE OR INVOLVEMENT OF THE DIRECTOR. ANY SUCH
21 AGREEMENTS SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS
22 24-82-704 TO 24-82-709.

23 **SECTION 3.** 24-82-704, Colorado Revised Statutes, is amended
24 to read:

25 **24-82-704. Payment obligations subject to annual appropriation**
26 **by the general assembly.** Every additional lease-purchase agreement
27 authorized by the director pursuant to the provisions of this part 7 shall

1 provide that all payment obligations of the state under such additional
2 lease-purchase agreement are subject to annual appropriation by the
3 general assembly and that such obligations shall not be deemed or
4 construed as creating an indebtedness of the state within the meaning of
5 any provision of the Colorado constitution or the laws of the state of
6 Colorado concerning or limiting the creation of indebtedness by the state
7 of Colorado AND SHALL NOT BE DEEMED OR CONSTRUED AS CREATING A
8 MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL
9 OBLIGATION OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF
10 ARTICLE X OF THE COLORADO CONSTITUTION.

11 **SECTION 4.** 24-82-705, Colorado Revised Statutes, is amended
12 to read:

13 **24-82-705. Terms and conditions of lease-purchase agreements.**

14 Any additional lease-purchase agreement entered into by the director
15 pursuant to the provisions of this part 7 may contain such terms,
16 provisions, and conditions as the director may deem appropriate. Such
17 provisions may allow the state to receive fee title to the real and personal
18 property which is the subject of such additional lease-purchase agreement
19 on or prior to the expiration of the entire term of the agreement, including
20 all optional renewal terms. Any additional lease-purchase agreement
21 entered into pursuant to the provisions of this part 7 may further provide
22 for the issuance, distribution, and sale of instruments BY THE LESSOR
23 evidencing rights to receive rentals and other payments made and to be
24 made under such additional lease-purchase agreement. ~~but only if and~~
25 ~~after a court of competent jurisdiction renders a final decision as to the~~
26 ~~constitutionality of the issuance of certificates of participation or other~~
27 ~~instruments evidencing the commitment of a district to make payments in~~

1 ~~subsequent fiscal years of moneys due under an installment purchase~~
2 ~~agreement for the purchase of real or personal property which requires~~
3 ~~payments during more than one fiscal year, or any agreement for the lease~~
4 ~~or rental of real or personal property which requires payments during~~
5 ~~more than one fiscal year and under which such district is entitled to~~
6 ~~receive title to the property at the end of the term for nominal or no~~
7 ~~additional consideration.~~ Such instruments shall not be notes, bonds, or
8 any other evidence of indebtedness of the state of Colorado within the
9 meaning of any provision of the Colorado constitution or the laws of the
10 state of Colorado concerning or limiting the creation of indebtedness by
11 the state of Colorado AND SHALL NOT CONSTITUTE A MULTIPLE-FISCAL
12 YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION OF THE
13 STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF THE
14 COLORADO CONSTITUTION. Interest paid under any additional
15 lease-purchase agreement entered into pursuant to this part 7, including
16 interest represented by such instruments, shall be exempt from Colorado
17 income tax. Any such additional lease-purchase agreements shall provide
18 an option for the state to purchase the property which is the subject of the
19 lease prior to the termination of such additional lease-purchase agreement.
20 In no event shall any individual representing a firm which was the
21 successful bidder for a proposed financial services contract, which
22 contract related to a master leasing program, prior to June 20, 1987, be
23 allowed to become the underwriter or financial advisor for any master
24 leasing agreement entered into by the director prior to June 30, 1988,
25 pursuant to the provisions of this part 7.

26 **SECTION 5.** 24-82-801 (3), Colorado Revised Statutes, is
27 amended to read:

1 **24-82-801. Lease-purchase agreements for acquisition of real**
2 **or personal property.** (3) As used in this section, "lease-purchase
3 agreement" means any installment purchase agreement for the purchase
4 of real or personal property which requires payments during more than
5 one fiscal year, or any agreement for the lease or rental of real or personal
6 property which requires payments during more than one fiscal year and
7 under which the state is entitled to receive title to the property at the end
8 of the term for nominal or no additional consideration. Such agreement
9 may further provide for the issuance, distribution, and sale of instruments
10 BY THE LESSOR CREATED PURSUANT TO SECTION 24-82-703 evidencing
11 rights to receive rentals and other payments made by the state under any
12 such lease-purchase agreement. ~~but only if and after a court of competent~~
13 ~~jurisdiction renders a final decision as to the constitutionality of the~~
14 ~~issuance of certificates of participation or other instruments evidencing the~~
15 ~~commitment of a district to make payments subject to annual~~
16 ~~appropriation in subsequent fiscal years of moneys due under an~~
17 ~~installment purchase agreement for the purchase of real or personal~~
18 ~~property which requires payments during more than one fiscal year, or any~~
19 ~~agreement for the lease or rental of real or personal property which~~
20 ~~requires payments subject to annual appropriation during more than one~~
21 ~~fiscal year and under which such district is entitled to receive title to the~~
22 ~~property at the end of the term for nominal or no additional consideration.~~
23 Such instruments shall not include notes, bonds, or any other evidence of
24 indebtedness of the state within the meaning of any provision of the
25 constitution or laws of the state of Colorado concerning or limiting the
26 creation of indebtedness by the state AND SHALL NOT CONSTITUTE A
27 MULTIPLE-FISCAL YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL

1 OBLIGATION OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF
2 ARTICLE X OF THE COLORADO CONSTITUTION.

3 **SECTION 6. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.