SUMMARY OF
HB09-1218 CAPITAL LEASING
HOUSE STATE AFFAIRS, VETERANS AND MILIATRY AFFAIRS COMMITTEE
FEBRUARY 17, 2009

The Bill accomplishes the following:

- Redefines the term "lease-purchase agreement" found in CRS 24-82-801 (2), and other provisions of the code as a "Capital Lease" to those defined by the Generally Accepted Account Principles (GAAP), used by the State of Colorado. GAAP currently recognizes the Financial Accounting Standards Board (FASB) Financial Accounting Standard (FAS) 13 for Capital Leases. To qualify as a FAS Capital Lease, a lease must meet one of four criteria.

  1) Allow Ownership Transfer (title)
  2) Provide a Bargain Purchase Option
  3) Equal 75% of the Asset's Economic Life
  4) Equal the Asset's Present Value – 90% Fair Value

  A transaction that meets one of these four criteria is viewed as essentially purchasing the asset. Future long-term lease transactions for real and personal property will be reviewed against these criteria. If a proposed lease transaction is a Capital Lease, with total payments greater than $500,000, it will require specific legislative approval.

- This Bill raises the dollar amount of total lease payments for equipment lease-purchase agreements from $50,000 to $500,000 before the lease transaction will require specific legislative approval. By raising this total dollar threshold, the Bill will allow, and encourage, state agencies to make better business decisions - allowing them to enter into lease-purchase agreements for equipment and take ownership of the equipment without prior specific legislative approval of the transaction.

- The Bill retains the current distinction between specific legislative approval for real property lease-purchase agreements and equipment (personal property) leases in CRS 24-82-801. Real estate lease-purchase agreements are usually very long-term (15 to 30-years), high dollar transactions; obligations, which require specific approval by a legislative bill. Personal property lease-purchase agreements are usually for shorter terms (four to ten years), and closely match the useful life of the equipment being leased. The specific legislative approval for equipment leases can be in the form of a legislative bill, a specific line authorization in the Annual Appropriations Bill, or a specific authorization in the Supplemental Act.

- The Bill clarifies CRS 24-82-1204, to require specific approval of the lease transaction for an "Approved building project" by legislative bill, if the transaction is a capital lease.

PROBLEM SOLVED BY THE BILL

A large percentage of contemporary state IT equipment and other equipment purchases now exceed $50,000. Because these leases are more common, obtaining special legislation for such a small dollar amounts is a low priority. Current requirements of CRS 24-82-801, allows agencies to enter into these leases at rental rates that fully pay the cost of the equipment, without requesting title to the equipment, thereby avoiding the need to introduce legislation. In short, the current statute provides a disincentive for agencies to take title to assets that are essentially paid for. Agencies do not appear willing to introduce legislation for such small procurements.

The State Controller is available to report on the findings or a recent survey of state equipment lease agreements. Some 78 percent of these leases are for transactions with under $500,000, but represent only seven percent of the total dollar commitment of state equipment leases. The Bill is intended to eliminate the excessive use of "operating leases" by allowing agencies to enter into capital leases and take title to the property, if it is in the best interest of the state, without requiring specific legislative authorization for the transaction.

Equipment leases over $500,000 in total payments represent 22 percent of the total state equipment leases, but account for 93 percent of total state equipment lease dollars. The Bill requires appropriate prior legislative vetting and approval of these major dollar lease commitments.

The Capital Development Committee also must approve capital asset acquisitions of $500,000 for more.

BENEFITS OF THE BILL

- This Bill allows state agencies and institutions to negotiate more beneficial lease-purchase agreements, rather than operating agreements, and receive title to the property.
- Increases the value of state agency assets through ownership.
- Reduces the number of equipment lease-purchase agreements that require special legislative approval.
- Increases legislative oversight of only the most expensive leases.
- Eliminates confusion over the applicability of CRS 24-82-1201 to capital lease transactions.