

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0819.01 Megan McCall x4215

SENATE BILL 23-161

SENATE SPONSORSHIP

Fenberg and Will,

HOUSE SPONSORSHIP

Lynch and McCluskie,

Senate Committees

Finance
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING STATE FUNDING TO FINANCE THE PURCHASE OF A**
102 **FIREFIGHTING AIRCRAFT TO RESPOND TO WILDFIRES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill directs the state, through the state treasurer, to execute a financed purchase of an asset or certificate of participation agreement (financing agreement) in an amount not to exceed \$4 million in annual payments and for a term of up to 20 years for the purchase of a fire hawk helicopter, configured for wildfire and other public safety response needs, for use by the division of fire prevention and control (division) within the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

department of public safety, subject to the availability of a suitable aircraft at a reasonable price as determined by the state treasurer in consultation with the division. Payments under the financing agreement are subject to annual appropriation by the general assembly from the Colorado firefighting air corps fund, from the general fund, or from any other legally available source of money. The financing agreement that is entered into must authorize the state or the division to receive fee title to the fire hawk helicopter on or before the expiration of the terms of the financing agreement.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-33.5-1228.5
3 as follows:

4 **24-33.5-1228.5. Financed purchase of an asset or certificate of**
5 **participation agreement for firefighting and aerial firefighting assets.**

6 (1) (a) NOTWITHSTANDING THE PROVISIONS OF SECTIONS 24-82-102
7 (1)(b) AND 24-82-801, AND PURSUANT TO SECTION 24-36-121, THE STATE,
8 ACTING BY AND THROUGH THE STATE TREASURER, SHALL, SUBJECT TO
9 AVAILABILITY OF A SUITABLE AIRCRAFT AT A REASONABLE PRICE AS
10 DETERMINED BY THE STATE TREASURER IN CONSULTATION WITH THE
11 DIVISION, EXECUTE A FINANCED PURCHASE OF AN ASSET OR CERTIFICATE
12 OF PARTICIPATION AGREEMENT FOR THE PURCHASE BY THE STATE OF A
13 FIRE HAWK HELICOPTER, CONFIGURED FOR WILDFIRE AND OTHER PUBLIC
14 SAFETY RESPONSE NEEDS, FOR USE BY THE DIVISION. THE FINANCED
15 PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT
16 SHALL BE IN AN AMOUNT UP TO TWENTY-SIX MILLION DOLLARS PLUS
17 REASONABLE AND NECESSARY ADMINISTRATIVE, MONITORING, AND
18 CLOSING COSTS AND INTEREST, INCLUDING CAPITALIZED INTEREST AND
19 CREDIT ENHANCEMENT COSTS SUCH AS DEBT SERVICE RESERVE FUND OR
20 BOND INSURANCE AND FOR NO MORE THAN TWENTY YEARS OF ANNUAL

1 PAYMENTS. THE STATE SHALL EXECUTE THE FINANCED PURCHASE OF AN
2 ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT AS SOON AS
3 POSSIBLE AFTER THE EFFECTIVE DATE OF THIS SECTION.

4 (b) THE ANTICIPATED ANNUAL STATE-FUNDED PAYMENTS FOR THE
5 PRINCIPAL AND INTEREST COMPONENTS OF THE AMOUNT PAYABLE UNDER
6 THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
7 AGREEMENT AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION SHALL
8 NOT EXCEED FOUR MILLION DOLLARS.

9 (c) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER,
10 AT THE DIRECTION OF THE DIVISION AND AT THE STATE TREASURER'S SOLE
11 DISCRETION, MAY ENTER INTO A FINANCED PURCHASE OF AN ASSET OR
12 CERTIFICATE OF PARTICIPATION AGREEMENT AUTHORIZED BY SUBSECTION
13 (1)(a) OF THIS SECTION WITH ANY FOR-PROFIT OR NONPROFIT
14 CORPORATION, TRUST, OR COMMERCIAL BANK ACTING AS A TRUSTEE AS
15 THE LESSOR.

16 (d) THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
17 PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED BY SUBSECTION
18 (1)(a) OF THIS SECTION MUST PROVIDE THAT ALL OF THE OBLIGATIONS OF
19 THE STATE UNDER THE AGREEMENT ARE SUBJECT TO THE ACTION OF THE
20 GENERAL ASSEMBLY IN ANNUALLY MAKING MONEY AVAILABLE FOR ALL
21 PAYMENTS THEREUNDER. PAYMENTS UNDER THE FINANCED PURCHASE OF
22 AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT MUST BE MADE
23 SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO
24 MAKE EACH FULL PAYMENT DUE PAID FROM THE COLORADO FIREFIGHTING
25 AIR CORPS FUND CREATED IN SECTION 24-33.5-1228 (3)(a), REFERRED TO
26 IN THIS SECTION AS THE "FUND", FROM THE GENERAL FUND, OR FROM ANY
27 OTHER LEGALLY AVAILABLE SOURCE OF MONEY.

1 (e) THE AGREEMENT MUST ALSO PROVIDE THAT THE OBLIGATIONS
2 OF THE STATE DO NOT CREATE STATE DEBT WITHIN THE MEANING OF ANY
3 PROVISION OF THE STATE CONSTITUTION OR STATE LAW CONCERNING OR
4 LIMITING THE CREATION OF STATE DEBT AND ARE NOT A MULTIPLE
5 FISCAL-YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION
6 OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF
7 THE STATE CONSTITUTION. IF THE STATE DOES NOT RENEW A FINANCED
8 PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT
9 EXECUTED AS AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION, THE
10 SOLE SECURITY AVAILABLE TO THE LESSOR IS THE PROPERTY THAT IS THE
11 SUBJECT OF THE NONRENEWED FINANCED PURCHASE OF AN ASSET OR
12 CERTIFICATE OF PARTICIPATION AGREEMENT, THE FIRE HAWK HELICOPTER
13 PURCHASED BY THE DIVISION PURSUANT TO SECTION 24-33.5-1228
14 (3)(c)(II)(A), OTHER STATE-OWNED PROPERTY, OR ANY OTHER AVAILABLE
15 FUNDS.

16 (f) THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
17 PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED BY SUBSECTION
18 (1)(a) OF THIS SECTION MAY CONTAIN SUCH TERMS, PROVISIONS, AND
19 CONDITIONS AS THE STATE TREASURER, ACTING ON BEHALF OF THE STATE,
20 DEEMS APPROPRIATE, INCLUDING ALL OPTIONAL TERMS; EXCEPT THAT THE
21 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
22 AGREEMENT MUST SPECIFICALLY AUTHORIZE THE STATE OR THE DIVISION
23 TO RECEIVE FEE TITLE TO ALL PROPERTY THAT IS SUBJECT TO THE
24 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
25 AGREEMENT ON OR BEFORE THE EXPIRATION OF THE TERMS OF THE
26 AGREEMENT.

27 (g) THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF

1 PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED BY SUBSECTION
2 (1)(a) OF THIS SECTION MAY PROVIDE FOR THE ISSUANCE, DISTRIBUTION,
3 AND SALE OF INSTRUMENTS EVIDENCING RIGHTS TO RECEIVE RENTALS AND
4 OTHER PAYMENTS MADE AND TO BE MADE UNDER THE FINANCED
5 PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT.
6 THE INSTRUMENTS MAY BE ISSUED, DISTRIBUTED, OR SOLD ONLY BY THE
7 LESSOR OR ANY PERSON DESIGNATED BY THE LESSOR AND NOT BY THE
8 STATE. THE INSTRUMENTS DO NOT CREATE A RELATIONSHIP BETWEEN THE
9 PURCHASERS OF THE INSTRUMENTS AND THE STATE OR CREATE ANY
10 OBLIGATION ON THE PART OF THE STATE TO THE PURCHASERS. THE
11 INSTRUMENTS ARE NOT NOTES, BONDS, OR ANY OTHER EVIDENCE OF STATE
12 DEBT WITHIN THE MEANING OF ANY PROVISION OF THE STATE
13 CONSTITUTION OR STATE LAW CONCERNING OR LIMITING THE CREATION OF
14 STATE DEBT AND ARE NOT A MULTIPLE FISCAL-YEAR DIRECT OR INDIRECT
15 DEBT OR OTHER FINANCIAL OBLIGATION OF THE STATE WITHIN THE
16 MEANING OF SECTION 20 (4) OF ARTICLE X OF THE STATE CONSTITUTION.

17 (h) INTEREST PAID UNDER A FINANCED PURCHASE OF AN ASSET OR
18 CERTIFICATE OF PARTICIPATION AGREEMENT AUTHORIZED PURSUANT TO
19 SUBSECTION (1)(a) OF THIS SECTION, INCLUDING INTEREST REPRESENTED
20 BY THE INSTRUMENTS, IS EXEMPT FROM COLORADO INCOME TAX.

21 (i) THE STATE, ACTING BY AND THROUGH THE STATE TREASURER
22 OR THE DEPARTMENT FOR THE USE AND BENEFIT OF THE DIVISION, IS
23 AUTHORIZED TO ENTER INTO ANCILLARY AGREEMENTS AND INSTRUMENTS
24 THAT ARE NECESSARY OR APPROPRIATE IN CONNECTION WITH THE
25 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
26 AGREEMENT, INCLUDING BUT NOT LIMITED TO DEEDS, GROUND LEASES,
27 SUB-LEASES, EASEMENTS, OR OTHER INSTRUMENTS RELATED TO REAL

1 PROPERTY AND IN CONNECTION WITH THE PURCHASE OF THE FIRE HAWK
2 HELICOPTER.

3 (j) THE PROVISIONS OF SECTION 24-30-202 (5)(b) DO NOT APPLY
4 TO THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE AGREEMENT
5 EXECUTED AS AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION OR TO
6 ANY ANCILLARY AGREEMENT OR INSTRUMENT ENTERED INTO PURSUANT
7 TO THIS SUBSECTION (1). THE STATE CONTROLLER OR THE STATE
8 CONTROLLER'S DESIGNEE SHALL WAIVE ANY PROVISION OF THE FISCAL
9 RULES PROMULGATED PURSUANT TO SECTION 24-30-202 (1) AND (13)
10 THAT THE STATE CONTROLLER FINDS INCOMPATIBLE OR INAPPLICABLE
11 WITH RESPECT TO THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE
12 OF PARTICIPATION AGREEMENT OR AN ANCILLARY AGREEMENT OR
13 INSTRUMENT.

14 (2) (a) BEFORE EXECUTING THE FINANCED PURCHASE OF AN ASSET
15 OR CERTIFICATE OF PARTICIPATION AGREEMENT AUTHORIZED BY
16 SUBSECTION (1)(a) OF THIS SECTION, IN ORDER TO PROTECT AGAINST
17 FUTURE INTEREST RATE INCREASES, THE STATE, ACTING BY AND THROUGH
18 THE STATE TREASURER AND AT THE DISCRETION OF THE STATE
19 TREASURER, MAY ENTER INTO AN INTEREST RATE EXCHANGE AGREEMENT
20 PURSUANT TO ARTICLE 59.3 OF TITLE 11. THE FINANCED PURCHASE OF AN
21 ASSET OR CERTIFICATE OF PARTICIPATION AGREEMENT EXECUTED AS
22 AUTHORIZED BY SUBSECTION (1)(a) OF THIS SECTION IS A PROPOSED
23 PUBLIC SECURITY FOR THE PURPOSES OF ARTICLE 59.3 OF TITLE 11. ANY
24 PAYMENTS MADE BY THE STATE UNDER AN AGREEMENT ENTERED
25 PURSUANT TO THIS SUBSECTION (2) MUST BE MADE SOLELY FROM MONEY
26 MADE AVAILABLE TO THE STATE TREASURER FROM THE EXECUTION OF A
27 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION

1 AGREEMENT OR FROM MONEY DESCRIBED IN SUBSECTION (1)(d) OF THIS
2 SECTION.

3 (b) ANY AGREEMENT ENTERED INTO PURSUANT TO THIS
4 SUBSECTION (2) MUST ALSO PROVIDE THAT THE OBLIGATIONS OF THE
5 STATE DO NOT CREATE STATE DEBT WITHIN THE MEANING OF ANY
6 PROVISION OF THE STATE CONSTITUTION OR STATE LAW CONCERNING OR
7 LIMITING THE CREATION OF STATE DEBT AND ARE NOT A MULTIPLE
8 FISCAL-YEAR DIRECT OR INDIRECT DEBT OR OTHER FINANCIAL OBLIGATION
9 OF THE STATE WITHIN THE MEANING OF SECTION 20 (4) OF ARTICLE X OF
10 THE STATE CONSTITUTION.

11 (c) ANY MONEY RECEIVED BY THE STATE UNDER AN AGREEMENT
12 ENTERED INTO PURSUANT TO THIS SUBSECTION (2) MUST BE USED TO MAKE
13 PAYMENTS ON THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
14 PARTICIPATION AGREEMENT ENTERED INTO PURSUANT TO SUBSECTION (1)
15 OF THIS SECTION OR TO PAY FOR COSTS RELATED TO THE PROPERTY FOR
16 WHICH THE FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF
17 PARTICIPATION AGREEMENT WAS EXECUTED.

18 (3) PROCEEDS OF THE FINANCED PURCHASE OF AN ASSET OR
19 CERTIFICATE OF PARTICIPATION AGREEMENT EXECUTED AS AUTHORIZED
20 BY SUBSECTION (1)(a) OF THIS SECTION MUST BE CREDITED TO THE FUND.

21 **SECTION 2.** In Colorado Revised Statutes, 24-33.5-1228,
22 **amend** (3)(a) and (3)(c)(I) as follows:

23 **24-33.5-1228. Colorado firefighting air corps - creation -**
24 **powers - aircraft acquisitions required - center of excellence -**
25 **unmanned aircraft systems study and pilot program - Colorado**
26 **firefighting air corps fund - creation - report - rules.** (3) (a) The
27 division shall administer the Colorado firefighting air corps fund, which

1 fund is hereby created in the state treasury. The division may seek and
2 accept gifts, grants, reimbursements, investments, bond revenues, sales
3 proceeds, commissions for services, sponsorships, advertising fees,
4 licensing fees, profits, or donations from private or public sources for the
5 purposes of this section. The fund consists of money transferred in
6 accordance with subsection (3)(c) of this section; all money that may be
7 appropriated to the fund by the general assembly; PROCEEDS OF THE
8 FINANCED PURCHASE OF AN ASSET OR CERTIFICATE OF PARTICIPATION
9 AGREEMENT EXECUTED PURSUANT TO SECTION 24-33.5-1228.5; and all
10 private and public funds received through gifts, grants, reimbursements,
11 investments, bond revenues, sales proceeds, commissions for services,
12 sponsorships, advertising fees, licensing fees, profits, or donations that
13 are transmitted to the state treasurer and credited to the fund. All interest
14 earned from the investment of money in the fund is credited to the fund.
15 The money in the fund is continuously appropriated for the purposes
16 indicated in subsection (3)(c) of this section. Any money not expended at
17 the end of the fiscal year remains in the fund.

18 (c) (I) Except as provided in subsection (3)(c)(III) of this section,
19 the division shall use the money in the Colorado firefighting air corps
20 fund for the purposes of subsection (2.5) of this section and for paying the
21 direct and indirect costs of maintaining the Colorado firefighting air
22 corps, including expenses, WHICH INCLUDES FINANCING COSTS, associated
23 with acquisition, retrofitting, labor, equipment, supply, transportation, air,
24 mobilization, repair, maintenance, and demobilization.

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