

First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

DRAFT  
2.24.13

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LLS NO. 13-0788.01 Jason Gelender x4330

COMMITTEE BILL

Capital Development Committee

SHORT TITLE: "BEST Program Oversight & Funding"

A BILL FOR AN ACT

101 CONCERNING LEGISLATIVE OVERSIGHT OF THE FUNDING OF P-12  
102 PUBLIC SCHOOL CAPITAL CONSTRUCTION PROJECTS THAT  
103 RECEIVE FUNDING UNDER THE BUILDING EXCELLENT SCHOOLS  
104 TODAY ACT.

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://www.leg.state.co.us/billsummaries>.)*

**Capital Development Committee.** The bill grants the capital development committee limited oversight over the building excellent

schools today (BEST) program by:

- Allowing the committee to review and approve or disapprove a revised prioritized list of projects recommended by the public school capital construction assistance board (board) and the state board of education for BEST funding that involves lease-purchase agreements. If the committee disapproves the list, the board may resubmit the list, with modifications or additional information, or both, that address the committee's concerns, and the committee may approve or disapprove the resubmitted list.
- Requiring the board, which currently reports annually to the education and finance committees of both houses of the general assembly, to also report annually to the capital development committee and to include in its reporting, to the extent feasible, an estimate of the amount of BEST revenues for the current and next fiscal year and BEST funding to be provided during the next fiscal year.

The bill also requires the board, in determining the amount of financial assistance that it provides and in so doing managing the balance of the public school capital construction assistance fund (assistance fund), to ensure that, effective June 30, 2013, and effective each June 30 thereafter, the balance of the assistance fund is at least equal to the total amount of payments to be made by the state, less the amount of any school district matching moneys and federal moneys to be received for the purpose of making the payments, during the next fiscal year under the terms of any BEST lease-purchase agreements.

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

2           **SECTION 1.** In Colorado Revised Statutes, 22-43.7-103, **add**  
3 (6.5) as follows:

4           **22-43.7-103. Definitions.** As used in this article, unless the  
5 context otherwise requires:

6           (6.5) "CAPITAL DEVELOPMENT COMMITTEE" MEANS THE CAPITAL  
7 DEVELOPMENT COMMITTEE OF THE GENERAL ASSEMBLY ESTABLISHED IN  
8 SECTION 2-3-1302 (1), C.R.S.

9           **SECTION 2.** In Colorado Revised Statutes, 22-43.7-104, **amend**  
10 (2) (b) (I); and **add** as follows:

1           **22-43.7-104. Public school capital construction assistance fund**  
2   **- creation - crediting of moneys to fund - use of fund - emergency**  
3   **reserve - creation - reserve account - creation and use.** (2) (b) For  
4 each fiscal year commencing on or after July 1, 2008, the following  
5 moneys shall be credited to the assistance fund:

6           (I) (A) Unless and until the state treasurer, pursuant to  
7 sub-subparagraph (B) of this subparagraph (I), provides written notice to  
8 the joint budget committee of the general assembly that the state treasurer  
9 has determined that the use of interest or income earned on the deposit  
10 and investment of moneys in the public school fund to make lease  
11 payments under a lease-purchase agreement entered into pursuant to  
12 section 22-43.7-110 (2) will prevent the interest component of the lease  
13 payments from qualifying for exemption from federal income taxation,  
14 the greater of thirty-five percent of the gross amount of public school  
15 lands income received during the fiscal year or an amount of such income  
16 equal to the difference between the total amount of lease payments to be  
17 made by the state under the terms of lease-purchase agreements entered  
18 into pursuant to section 22-43.7-110 (2) and the TOTAL AMOUNT OF  
19 MONEYS IN THE ASSISTANCE FUND, INCLUDING THE total amount of  
20 matching moneys to be paid to the state as lease payments under the terms  
21 of sublease-purchase agreements entered into pursuant to section  
22 22-43.7-110 (2), THAT ARE AVAILABLE TO MAKE THE LEASE PAYMENTS TO  
23 BE MADE BY THE STATE. The moneys required to be credited to the  
24 assistance fund pursuant to this sub-subparagraph (A) may be taken from  
25 any single source or combination of sources of public school lands  
26 income.

27           (B) Except as otherwise provided in sub-subparagraph (C) of this

1 subparagraph (I), if the state treasurer determines during any fiscal year  
2 that the use of interest or income earned on the deposit and investment of  
3 moneys in the public school fund to make lease payments under a  
4 lease-purchase agreement will prevent the interest component of the lease  
5 payments from qualifying for exemption from federal income taxation  
6 and provides written notice to the joint budget committee of the general  
7 assembly of the determination, for the portion of the fiscal year beginning  
8 on the date the written notice is provided to the joint budget committee  
9 and for each subsequent fiscal year, the greater of fifty percent of the  
10 gross amount of public school lands income other than interest or income  
11 earned on the deposit and investment of moneys in the public school fund  
12 received during the fiscal year or an amount of such public school lands  
13 income equal to the difference between the total amount of lease  
14 payments to be made by the state under the terms of lease-purchase  
15 agreements entered into pursuant to section 22-43.7-110 (2) and the  
16 TOTAL AMOUNT OF MONEYS IN THE ASSISTANCE FUND, INCLUDING THE  
17 total amount of matching moneys to be paid to the state as lease payments  
18 under the terms of sublease-purchase agreements entered into pursuant to  
19 section 22-43.7-110 (2), THAT ARE AVAILABLE TO MAKE THE LEASE  
20 PAYMENTS TO BE MADE BY THE STATE. The moneys required to be  
21 credited to the assistance fund pursuant to this sub-subparagraph (B) may  
22 be taken from any single source or combination of sources of public  
23 school lands income other than interest or income earned on the deposit  
24 and investment of moneys in the public school fund.

25 (C) If, after making a determination and providing notice pursuant  
26 to sub-subparagraph (B) of this subparagraph (I), the state treasurer  
27 makes a new determination during any fiscal year that the use of interest

1 or income earned on the deposit and investment of moneys in the public  
2 school fund to make lease payments under a lease-purchase agreement  
3 entered into pursuant to section 22-43.7-110 (2) will not prevent the  
4 interest component of the lease payments from qualifying for exemption  
5 from federal income taxation and the state treasurer provides written  
6 notice to the joint budget committee of the general assembly that the state  
7 treasurer has made a new determination and is rescinding the  
8 determination made pursuant to said sub-subparagraph (B) as of the date  
9 the written notice is provided, for the portion of the fiscal year beginning  
10 on the date the written notice is provided to the joint budget committee  
11 and for each subsequent fiscal year, the greater of thirty-five percent of  
12 the gross amount of public school lands income received during the fiscal  
13 year or an amount of such income equal to the difference between the  
14 total amount of lease payments to be made by the state under the terms of  
15 lease-purchase agreements entered into pursuant to section 22-43.7-110  
16 (2) and the TOTAL AMOUNT OF MONEYS IN THE ASSISTANCE FUND,  
17 INCLUDING THE total amount of matching moneys to be paid to the state  
18 as lease payments under the terms of sublease-purchase agreements  
19 entered into pursuant to section 22-43.7-110 (2), THAT ARE AVAILABLE TO  
20 MAKE THE LEASE PAYMENTS TO BE MADE BY THE STATE. The moneys  
21 required to be credited to the assistance fund pursuant to this  
22 sub-subparagraph (C) may be taken from any single source or  
23 combination of sources of public school lands income.

24 (3.5) IN DETERMINING THE AMOUNT OF FINANCIAL ASSISTANCE  
25 THAT IT PROVIDES AND IN SO DOING MANAGING THE BALANCE OF THE  
26 ASSISTANCE FUND, THE BOARD SHALL ENSURE THAT, EFFECTIVE JUNE 30,  
27 2013, AND EFFECTIVE EACH JUNE 30 THEREAFTER, THE BALANCE OF THE

1 ASSISTANCE FUND IS AT LEAST EQUAL TO THE TOTAL AMOUNT OF  
2 PAYMENTS TO BE MADE BY THE STATE DURING THE FISCAL YEAR  
3 FOLLOWING THE FISCAL YEAR IN WHICH THE TRANSFER IS EFFECTIVE  
4 UNDER THE TERMS OF ANY LEASE-PURCHASE AGREEMENTS ENTERED INTO  
5 PURSUANT TO SECTION 22-43.7-110(2) LESS THE AMOUNT OF ANY SCHOOL  
6 DISTRICT MATCHING MONEYS AND ANY FEDERAL MONEYS TO BE RECEIVED  
7 FOR THE PURPOSE OF MAKING THE PAYMENTS.

8 **SECTION 3.** In Colorado Revised Statutes, 22-43.7-109, **amend**  
9 (1) introductory portion, (2) (a) (III), (7), and (9) introductory portion as  
10 follows:

11 **22-43.7-109. Financial assistance for public school capital**  
12 **construction - application requirements - evaluation criteria - local**  
13 **match requirements.** (1) For fiscal years commencing on or after July  
14 1, 2008, the board, with the support of the division and subject to the final  
15 approval of the state board AND, IN THE CASE OF FINANCIAL ASSISTANCE  
16 THAT INVOLVES LEASE-PURCHASE AGREEMENTS, SUBJECT TO BOTH THE  
17 PRELIMINARY APPROVAL OF THE STATE BOARD AND THE FINAL APPROVAL  
18 OF THE CAPITAL DEVELOPMENT COMMITTEE, regarding financial assistance  
19 awards as specified in this section, shall provide financial assistance as  
20 specified in this section subject to the following limitations:

21 (2) (a) Except as otherwise provided in subparagraph (II) of  
22 paragraph (b) of this subsection (2), the board shall establish an annual  
23 financial assistance timeline for use by applicants in applying for  
24 financial assistance and otherwise meeting financial assistance  
25 requirements and for use by the board in reviewing financial assistance  
26 applications and recommending financial assistance awards to the state  
27 board. The timeline shall specify:

1 (III) A deadline, NO LATER THAN JUNE 1 OF EACH YEAR, for the  
2 board to submit to the state board the prioritized list of projects for which  
3 the board recommends the provision of financial assistance as required by  
4 subsection (7) of this section; and

5 (7)(a) Pursuant to the timelines established pursuant to subsection  
6 (2) of this section for any fiscal year for which financial assistance is to  
7 be awarded, and after prioritizing public school facility capital  
8 construction projects as specified in subsection (5) of this section, the  
9 board shall submit to the state board a prioritized list of projects for which  
10 the board recommends the provision of financial assistance. The  
11 prioritized list ~~shall~~ MUST include the board's recommendation as to the  
12 amount and type of financial assistance to be provided and a statement of  
13 the source and amount of applicant matching moneys for each  
14 recommended project based upon information provided by the applicant.  
15 The board may recommend that any specific project only receive financial  
16 assistance if another higher priority project or group of projects becomes  
17 ineligible for financial assistance due to the inability of an applicant to  
18 raise required matching moneys by a deadline prescribed by the board as  
19 a condition of a financial assistance award for the higher priority project  
20 or group of projects. The state board SHALL REVIEW AND MAKE DECISIONS  
21 REGARDING THE PRIORITIZED LIST NO LATER THAN JUNE 20 OF EACH YEAR  
22 AND may approve, disapprove, or modify the provision of financial  
23 assistance for any project recommended by the board if the state board  
24 concludes that the board misinterpreted the results of the prioritization  
25 assessment conducted pursuant to section 22-43.7-108 or misapplied the  
26 prioritization criteria specified in subsection (5) of this section. The state  
27 board shall specifically explain in writing its reasons for finding that the

1 board misinterpreted the results of the priority assessment or misapplied  
2 the prioritization criteria when disapproving or modifying any financial  
3 assistance award recommended by the board.

4 (b) NO LATER THAN JUNE 25 OF EACH YEAR, THE STATE BOARD  
5 SHALL SUBMIT TO THE CAPITAL DEVELOPMENT COMMITTEE A REVISED  
6 PRIORITIZED LIST THAT INCLUDES ONLY THOSE PROJECTS FOR WHICH THE  
7 STATE BOARD IS RECOMMENDING AWARDS OF FINANCIAL ASSISTANCE  
8 THAT INVOLVE LEASE-PURCHASE AGREEMENTS. THE STATE BOARD SHALL  
9 SUBMIT WITH THE LIST SUCH INFORMATION REGARDING THE DETAILS OF  
10 THE FINANCING OF THE LISTED PROJECTS AS THE CAPITAL DEVELOPMENT  
11 COMMITTEE MAY REASONABLY REQUEST. NO LATER THAN JULY 15 OF  
12 EACH YEAR, THE CAPITAL DEVELOPMENT COMMITTEE MAY APPROVE OR  
13 DISAPPROVE THE LIST. IF THE CAPITAL DEVELOPMENT COMMITTEE DOES  
14 NOT APPROVE OR DISAPPROVE THE LIST BY JULY 15, IT IS DEEMED TO HAVE  
15 APPROVED THE LIST AS SUBMITTED.

16 (c) IF THE CAPITAL DEVELOPMENT COMMITTEE DISAPPROVES THE  
17 REVISED PRIORITIZED LIST, IT SHALL PROVIDE ITS REASONS FOR DOING SO  
18 IN WRITING TO THE BOARD NO LATER THAN JULY 20. NO LATER THAN  
19 AUGUST 1, THE BOARD MAY RESUBMIT THE LIST WITH MODIFICATIONS OR  
20 ADDITIONAL INFORMATION, OR BOTH, THAT ADDRESS THE COMMITTEE'S  
21 CONCERNS. NO LATER THAN AUGUST 15, THE CAPITAL DEVELOPMENT  
22 COMMITTEE MAY APPROVE OR DISAPPROVE THE RESUBMITTED LIST. IF THE  
23 CAPITAL DEVELOPMENT COMMITTEE DOES NOT APPROVE OR DISAPPROVE  
24 THE RESUBMITTED LIST BY AUGUST 15, IT IS DEEMED TO HAVE APPROVED  
25 THE LIST AS RESUBMITTED.

26 (9) Except as otherwise provided in subsection (10) of this  
27 section, the board shall MAY recommend, and the state board shall MAY

1 approve financial assistance THAT DOES NOT INVOLVE A LEASE-PURCHASE  
2 AGREEMENT for OR RECOMMEND TO THE CAPITAL DEVELOPMENT  
3 COMMITTEE THE APPROVAL OF FINANCIAL ASSISTANCE THAT INVOLVES A  
4 LEASE-PURCHASE AGREEMENT FOR a public school facility capital  
5 construction project only if the applicant provides matching moneys in an  
6 amount equal to a percentage of the total financing for the project  
7 determined by the board after consideration of the applicant's financial  
8 capacity, as determined by the following factors:

9           **SECTION 4.** In Colorado Revised Statutes, 22-43.7-110, **amend**  
10 (2) introductory portion as follows:

11           **22-43.7-110. Financial assistance - grants - lease-purchase**  
12 **agreements.** (2) Subject to the following requirements and limitations,  
13 the board may also instruct the state treasurer to enter into lease-purchase  
14 agreements on behalf of the state to provide financial assistance to  
15 applicants by financing public school facility capital construction projects  
16 for which the state board has RECOMMENDED AND THE CAPITAL  
17 DEVELOPMENT COMMITTEE HAS authorized the provision of financial  
18 assistance THAT INVOLVES A LEASE-PURCHASE AGREEMENT pursuant to  
19 section 22-43.7-109 (7):

20           **SECTION 5.** In Colorado Revised Statutes, 22-43.7-111, **amend**  
21 (1) introductory portion; and **add** (1) (e) as follows:

22           **22-43.7-111. Reporting requirements - auditing by state**  
23 **auditor.** (1) No later than February 15, 2010, and no later than each  
24 February 15 thereafter, the board shall present a written report to the  
25 education and finance committees of the house of representatives and the  
26 senate AND THE CAPITAL DEVELOPMENT COMMITTEE OF THE GENERAL  
27 ASSEMBLY, or any successor committees, regarding the provision of

1 financial assistance to applicants pursuant to this article. The report shall  
2 include, at a minimum:

3 (e) AN ESTIMATE, TO THE EXTENT FEASIBLE, OF THE TOTAL  
4 AMOUNTS OF REVENUES TO BE CREDITED TO THE ASSISTANCE FUND  
5 DURING THE CURRENT FISCAL YEAR AND THE NEXT FISCAL YEAR AND  
6 FINANCIAL ASSISTANCE TO BE AWARDED DURING THE NEXT FISCAL YEAR,  
7 INCLUDING SEPARATE ESTIMATES OF THE TOTAL AMOUNTS OF FINANCIAL  
8 ASSISTANCE TO BE AWARDED AS CASH GRANTS AND UNDER THE TERMS OF  
9 LEASE-PURCHASE AGREEMENTS ENTERED INTO PURSUANT TO SECTION  
10 22-43.7-110 (2).

11 **SECTION 6. Applicability.** This act applies to applications for  
12 financial assistance filed on or after September 1, 2014.

13 **SECTION 7. Safety clause.** The general assembly hereby finds,  
14 determines, and declares that this act is necessary for the immediate  
15 preservation of the public peace, health, and safety.