

CHAPTER 1177**CENTRALIZED FINANCING OF STATE AGENCY PROPERTY PURCHASES****S.F. 2366****AN ACT** relating to lease-purchase agreements.*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 8D.11, subsection 1, Code 1995, is amended to read as follows:

1. The commission may purchase, ~~lease-purchase~~, lease, and improve property, equipment, and services for telecommunications for public and private agencies and may dispose of property and equipment when not necessary for its purposes. However, the commission shall not enter into a contract for the purchase, ~~lease-purchase~~, lease, or improvement of property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than ~~five hundred thousand~~ one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session. The commission shall not issue any bonding or other long-term financing arrangements as defined in section 12.30, subsection 1, paragraph "b". Real or personal property to be purchased by the commission through the use of a financing agreement shall be done in accordance with the provisions of section 12.28, provided, however, that the commission shall not purchase property, equipment, or services for telecommunications pursuant to this subsection in an amount greater than one million dollars without prior authorization by a constitutional majority of each house of the general assembly, or approval by the legislative council if the general assembly is not in session.

1A. The commission also shall not provide or resell communications services to entities other than public and private agencies. The public or private agency shall not provide communication services of the network to another entity unless otherwise authorized pursuant to this chapter. The commission may arrange for joint use of available services and facilities, and may enter into leases and agreements with private and public agencies with respect to the Iowa communications network, and public agencies are authorized to enter into leases and agreements with respect to the network for their use and operation. Rentals and other amounts due under the agreements or leases entered into pursuant to this section by a state agency are payable from funds annually appropriated by the general assembly or from other funds legally available. Other public agencies may pay the rental costs and other amounts due under an agreement or lease from their annual budgeted funds or other funds legally available or to become available.

1B. This section comprises a complete and independent authorization and procedure for a public agency, with the approval of the commission, to enter into a lease or agreement ~~and related security enhancement arrangements~~ and this section is not a qualification of any other powers which a public agency may possess and the authorizations and powers granted under this section are not subject to the terms, requirements, or limitations of any other provisions of law, except that the commission must comply with the provisions of section 12.28 when entering into financing agreements for the purchase of real or personal property. All moneys received by the commission from agreements and leases entered into pursuant to this section with private and public agencies shall be deposited in the Iowa communications network fund.

Sec. 2. NEW SECTION. 12.28 CENTRALIZED FINANCING FOR STATE AGENCY PURCHASE OF REAL AND PERSONAL PROPERTY.

1. As used in this section, unless the context otherwise requires:

a. "Financing agreement" means any lease, lease-purchase agreement, or installment acquisition contract in which the lessee may purchase the leased property at a price which is less than the fair market value of the property at the end of the lease term, or any lease, agreement, or transaction which would be considered under criteria established by the

Internal Revenue Service to be a conditional sale agreement for tax purposes.

b. "State agency" means a board, commission, bureau, division, office, department, or branch of state government. However, state agency does not mean the state board of regents, institutions governed by the board of regents, or authorities created under chapter 16, 16A, 175, 257C, 261A, or 327I.

2. The treasurer of state shall have sole authority to enter into financing agreements on behalf of state agencies. The treasurer of state may enter into financing agreements, including master lease-purchase agreements, for the purpose of funding state agency requests for the financing of real or personal property, wherever located within the state, including equipment, buildings, facilities, and structures, or additions or improvements to existing buildings, facilities, and structures. Subject to the selection procedures of section 12.30, the treasurer may employ financial consultants, banks, trustees, insurers, underwriters, accountants, attorneys, and other advisors or consultants as necessary to implement the provisions of this section. The costs of professional services and any other costs of entering into the financing agreements may be included in the financing agreement as a cost of the property being financed.

3. The financing agreement may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all financing agreements entered into pursuant to this section. The financing agreements may contain provisions pertaining, but not limited to, interest, term, prepayment, and the state's obligation to make payments on the financing agreement beyond the current budget year subject to availability of appropriations. All projects financed under this section shall be deemed to be for an essential governmental purpose.

4. The treasurer of state may contract for additional security or liquidity for a financing agreement and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a financing agreement. Fees for the costs of additional security or liquidity are a cost of entering into the financing agreement and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained, from other funds legally available, or from proceeds of the financing agreement. The provision of a financing agreement which provides that a portion of the periodic rental or lease payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to financing agreements entered into pursuant to this section.

5. Payments and other costs due under financing agreements entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The treasurer of state, in cooperation with the department of revenue and finance, shall implement procedures to ensure that state agencies are timely in making payments due under the financing agreements.

6. The maximum principal amount of financing agreements which the treasurer of state can enter into shall be one million dollars per state agency in a fiscal year, subject to the requirements of section 8.46. For the fiscal year, the treasurer of state shall not enter into more than one million dollars of financing agreements per state agency, not considering interest expense. However, the treasurer of state may enter into financing agreements in excess of the one million dollar per agency per fiscal year limit if a constitutional majority of each house of the general assembly, or the legislative council if the general assembly is not in session, and the governor, authorize the treasurer of state to enter into additional financing agreements above the one million dollar authorization contained in this section. The treasurer of state shall not enter into a financing agreement for real or personal property which is to be constructed for use as a prison or prison-related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest

expense, of the real or personal property to be financed. However, financing agreements for an energy conservation measure, as defined in section 7D.34, are exempt from the provisions of this subsection, but are subject to the requirements of section 7D.34 or 473.20A. In addition, financing agreements funded through the materials and equipment revolving fund established in section 307.47 are exempt from the provisions of this subsection.

7. The treasurer of state shall decide upon the most economical method of financing a state agency's request for funds. The treasurer of state may utilize master lease-purchase agreements, issue certificates of participation in lease-purchase agreements, or use any other financing method or method of sale which the treasurer believes will provide savings to the state in issuance or interest costs.

8. A financing agreement to which the state is a party is an obligation of the state for purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investments companies, insurance companies, insurance associations, executors, guardians, trustees, and other fiduciaries responsible for the investment of funds.

9. Publication of any notice, whether under section 73A.12 or otherwise, and other or further proceedings with respect to the financing agreements referred to in this section are not required except as set forth in this section, notwithstanding any provisions of other statutes of the state to the contrary.

Sec. 3. Section 18.12, subsection 10, Code Supplement 1995, is amended to read as follows:

10. ~~On behalf of the department, enter into lease purchase contracts for real or personal property, wherever located within the state, to be used for buildings, facilities, and structures, or for additions or improvements to existing buildings, facilities, and structures, to carry out the provisions of this section or for the proper use and benefit of the state and its state agencies on the following terms and conditions:~~

a. ~~The Unless otherwise provided by law, the director shall coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property lease purchased with the to be purchased by a state agency for whose benefit and use the property is being obtained and the terms and conditions of the lease purchase contract with both the state agency for whose benefit and use the property is being obtained and the treasurer of state. If the purchase of real or personal property is to be financed pursuant to section 12.28, the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property. Upon awarding the contract for construction of a building or for site development, the director shall have sole authority to administer the contract.~~

b. ~~The lease purchase contract may provide for ultimate ownership of the property by the state. Title to all property acquired in this manner shall be taken and held in the name of the state. The state shall be the lessee or contracting party under all lease purchase contracts entered into pursuant to this section. The lease purchase contract may contain provisions similar to provisions customarily found in lease purchase contracts between private persons, including, but not limited to, provisions prohibiting the acquisition or use by the lessee of competing property or property in substitution for the lease purchased property, obligating the lessee to pay costs of operation, maintenance, insurance, and taxes relating to the property, and permitting the lessor to retain a security interest in the property lease purchased, until title passes to the state, which may be assigned or pledged by the lessor. The director may contract for additional security or liquidity for a lease purchase contract and may enter into agreements for letters of credit, lines of credit, insurance, or other forms of security with respect to rental and other payments due under a lease purchase contract. Fees for the costs of additional security or liquidity are a cost of entering into the lease purchase contract and may be paid from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available. The lease purchase contract may include the costs of~~

~~entering into the lease purchase contract as a cost of the lease purchased property. The provision of a lease purchase contract which provides that a portion of the periodic rental payment be applied as interest is subject to chapter 74A. Other laws relating to interest rates do not apply. Chapter 75 does not apply to lease purchase contracts entered into pursuant to this section. Rental and other costs due under lease purchase contracts entered into pursuant to this section shall be payable from funds annually appropriated by the general assembly to the state agency for which the property is being obtained or from other funds legally available.~~

~~e. A lease purchase contract to which the state is a party is an obligation of a state for purposes of chapters 502 and 636, and is a lawful investment for banks, trust companies, building and loan associations, savings and loan associations, investment companies, insurance companies, insurance associations, executors, guardians, trustees, and other fiduciaries responsible for the investment of funds.~~

~~d. The director shall not enter into lease purchase contracts pursuant to this section without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be lease purchased. However, the director shall not enter into a lease purchase contract for real or personal property which is to be constructed for use as a prison or prison related facility without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor of the use, location, and maximum cost, not including interest expense, of the real or personal property to be lease purchased and with the construction in accordance with space needs as established by an independent study of space needs authorized by the general assembly.~~

~~e. A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease purchased by the director treasurer of state pursuant to this section 12.28 is exempt from section 18.6, subsections 1 and 9, unless the lease purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the director treasurer of state under a lease purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.~~

~~This subsection provides an alternative and independent method for carrying out projects under this chapter and for entering into lease purchase contracts in connection with the projects, without reference to any other statute, and is not an amendment of or subject to the provision of any other law. No publication of any notice, whether under section 73A.12 or otherwise, and no other or further proceedings with respect to the lease purchase contracts referred to in this section are required except as set forth in this section, any provisions of other statutes of the state to the contrary notwithstanding.~~

~~For Unless the context otherwise requires, for purposes of this subsection and subsection 12, "state agency" means a board, commission, bureau, division, office, department, or branch of state government.~~

Sec. 4. REPEAL. Section 18.23, Code 1995, is repealed.

Approved April 30, 1996