

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. _____ 409

By: Mickle

AS INTRODUCED

An Act relating to Education and Finance, providing citation; making legislative finding; authorizing creation of Oklahoma Higher Education Finance Authority; providing procedure for creation of Authority; providing for board of directors; making Authority an instrumentality of the state; establishing mission; granting power to issue bonds; defining terms; providing for appointments to Board; providing for travel reimbursement and stipend; providing for officers and quorum; requiring minimum vote for certain actions; providing procedures for certain actions; providing for delegation of certain powers of the Board; restricting use of funds of the Authority; requiring compliance with certain acts; providing for exemption from certain laws; requiring disclosure of certain conflicts of interest and providing procedures and penalties in event a conflict of interest exists; requiring appointment of president of the board; providing procedures; establishing duties and obligations of president; establishing powers of Authority; providing restrictions; limiting liability of members, officers and employees of Authority; requiring certain indemnification; authorizing Authority to borrow money and issue bonds; providing limitations on such power; providing procedures and restrictions; prohibiting bonds from becoming indebtedness of the state; exempting bonds from certain taxation; authorizing purchase of bonds by certain entities; exempting Authority from certain taxes; providing for vesting of certain rights; providing for issuance of taxable bonds; providing for construction of act; prohibiting certain actions by Authority; requiring report and prescribing contents; establishing certain requirements for audit; requiring report and prescribing contents; amending 60 O.S. 1991, Section 176, as last amended by Section 1, Chapter 173, O.S.L. 1998 (60 O.S. Supp. 1998, Section 176), which relates to public trusts; exempting Authority from provisions of statute; amending 62 O.S. 1991, Section 41.14 and 695.8, as last amended by Section 2, Chapter 188, O.S.L. 1998 (62 O.S. Supp. 1998, Section 695.8), which relate to The Oklahoma State System of Higher Education and Bond Oversight Commissions; requiring indication of amount of certain allotment reserved for certain purpose; prohibiting expenditure of amount reserved; requiring certain review of operations of Authority; amending 70 O.S. 1991, Sections 3210 and 4001, which relate to appropriations and allotments to institutions of higher education and acquisition of property by such

institutions; requiring State Regents for Higher Education to indicate certain amount to be reserved from allocations to each institution; requiring Director of State Finance to reserve portion of certain allocation; requiring reserve to be used by Regents for certain purpose; exempting Authority from operation of certain prohibition; amending 74 O.S. 1991, Sections 85.4, as last amended by Section 3, Chapter 371, O.S.L. 1998 and 85.12, as last amended by Section 7, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1997, Sections 85.4 and 85.12), which relate to the Central Purchasing Act; exempting certain acquisitions by entities within The Oklahoma State System of Higher Education from the provisions of certain sections of law related to purchasing; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3921 of Title 70, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Higher Education Finance Authority Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3922 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The Legislature finds an immediate and urgent need to provide alternative means and methods for providing financing for equipment and other personal property purchases by institutions within The Oklahoma State System of Higher Education.

B. The Oklahoma State Regents for Higher Education are hereby authorized to take the necessary actions to organize a public trust pursuant to Title 60 of the Oklahoma Statutes for the benefit of the entire state of Oklahoma for the purpose of providing equipment and other personal property for institutions and entities within The Oklahoma State System of Higher Education. Such trust shall be known as the Oklahoma Higher Education Finance Authority as provided

by this act. The indenture of such trust shall be drafted to conform with the provisions of this act and, upon certification by the Governor, such trust shall be known as and exercise all of the powers of the Oklahoma Higher Education Finance Authority as provided by law. The Oklahoma Higher Education Finance Authority is hereby constituted an instrumentality of the state and the exercise of the authority and powers conferred by this act shall be deemed and held to be the performance of an essential governmental function.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3923 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The mission of the Oklahoma Higher Education Finance Authority shall be to take into account and develop a master lease program for institutions and entities within The Oklahoma State System of Higher Education based upon the following findings:

1. The processing of individual lease purchase requests by institutions and entities within The Oklahoma State System of Higher Education consumes a great deal of staff resources and time which could be more effectively utilized through a master lease program;
2. Individual lease purchases tend to have associated costs and rates which are higher than that which could be procured in a master lease program; and
3. Time delays implicit in the current structure should be significantly reduced to allow institutions to respond to their needs in a more timely fashion.

B. It is hereby found that the public policies and responsibilities of the state cannot be fully attained without the use of public financing and that such public financing can best be provided by the creation of a state educational finance authority with comprehensive and extensive powers therein, which authority shall have the power to issue bonds to provide financing for

qualified equipment and personal property purchases for institutions and entities within The Oklahoma State System of Higher Education which is a public purpose and a use for which public moneys may be borrowed, expended, advanced, loaned and granted.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3924 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Higher Education Finance Authority Act:

1. "Authority" means the Oklahoma Higher Education Finance Authority;
2. "Board of directors" means and includes the board of directors of the Authority created by this act;
3. "Bonds" means any bonds, notes, obligations, debentures, interim certificates, grant and revenue anticipation notes, interest in a lease, lease certificates of participation or other evidences of indebtedness, whether or not the interest on which is includable in the gross income of the recipients thereof for federal income tax purposes, issued by the Authority pursuant to this act;
4. "Financing assistance" or "financial assistance" means the making of, entering into or providing for guarantees, leases, insurance, financing credits, loans, letters of credit, financing assistance payments, grants or other financial aid;
5. "Financial document" means a lease, installment sale agreement, conditional sale agreement, note, mortgage, chattel mortgage, loan agreement or other instrument pertaining to an extension of financial assistance; and
6. "State" means the State of Oklahoma or any office, department, agency, authority, commission, board, institution, hospital, college, university, public trust where the state is the beneficiary, or other instrumentality thereof.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3925 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Upon certification by the Governor of the public trust as qualifying to become the Oklahoma Higher Education Finance Authority, the board of trustees of such trust shall become the governing board of the Oklahoma Higher Education Finance Authority.

B. The Authority shall be governed by a Board of Trustees composed of five members, three of whom shall be appointed by the Oklahoma State Regents for Higher Education. Any or all of those appointive members may be staff members of the Office of the Oklahoma State Regents for Higher Education. One member shall be the State Treasurer or designee. One member shall be the Director of the Office of State Finance or designee.

C. Each appointive member may receive reimbursement for expenses pursuant to the provisions of the State Travel Reimbursement Act.

D. Members shall annually elect from among the membership a chair, vice-chair, secretary and treasurer, and may elect an assistant secretary or assistant secretaries who need not be members of the board. A majority of members of the board shall constitute a quorum and the affirmative vote of the majority of members present at a meeting of the board shall be necessary and sufficient for any action taken by the board, except that the affirmative vote of at least a majority of all members shall be required for the approval of any resolution authorizing the issuance of any bonds or approving any loan transaction pursuant to this act.

E. No vacancy in the membership of the board shall impair the right of a quorum to exercise all rights and perform all the duties of the board. Any action taken by the board may be authorized by resolution at any regular, special, or emergency meeting and shall take effect upon the date the chair or vice-chair certifies the

action of the Authority by signing the resolution unless some other date is provided in the resolution.

F. The board may delegate to its employees, persons under contract to provide administrative or staff services to the board, its members and/or officers of the Authority such duties as it deems necessary or convenient to carry out the purposes of this act. The board may contract with the Oklahoma State Bond Advisor to provide all or part of the board's administrative and staff services. Funds of the Oklahoma Higher Education Finance Authority may be paid to the Oklahoma State Bond Advisor for services reasonably attributable to the operation of the Oklahoma Higher Education Finance Authority.

G. Except as otherwise provided by law, no part of the funds of the Authority shall inure to the benefit of, or be distributed to its employees, officers, or board of directors, except that the Authority shall be authorized and empowered to pay its employees and agents reasonable compensation and benefits.

H. The meetings of the board of directors of the Oklahoma Higher Education Finance Authority shall be subject to the Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, and the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes.

I. The Authority shall not be subject to state laws regulating the classification, employment, promotion, suspension, disciplinary action or dismissal of state employees. The Oklahoma Higher Education Finance Authority shall not be subject to the provisions of the Oklahoma Central Purchasing Act.

J. If a member of the board of directors, officer, agent or employee of the Oklahoma Higher Education Finance Authority has any direct or any indirect interest in any approval, contract or agreement upon which the member, officer, agent or employee may be called upon to act or vote, the board member, officer, agent or employee shall disclose the same to the secretary of the Authority

prior to the taking of final action by the Authority concerning such contract or agreement and shall so disclose the nature and extent of such interest and his or her acquisition thereof, which disclosure shall be publicly acknowledged by the Authority and entered upon the minutes of the Authority. If a board member, officer, agent or employee holds such an interest, he or she shall refrain from any further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other board members, officers, agents or employees concerning said contract or agreement. Notwithstanding any other provision of law, any contract or agreement entered into in conformity with this subsection shall not be void or invalid by reason of the interest described in this subsection, nor shall any person so disclosing the interest and refraining from further official involvement as provided for in this subsection be guilty of an offense, be removed from office, or be subject to any other penalty on account of such interest. Provided, any approval, contract or agreement made in violation of this section shall give rise to no action against the Authority.

Indirect interest shall include pecuniary or competitive advantage which exists or could foreseeably accrue as a result of the act or forbearance of the Authority.

K. Board members and officers of the Authority shall be considered "public members" under the rules of the Ethics Commission and shall be subject to all rules and penalties promulgated pursuant to Article XXIX of the Oklahoma Constitution which relate to public members.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3926 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Higher Education Finance Authority is hereby granted, has and may exercise all powers necessary or appropriate to

carry out and effectuate its corporate purposes, including without limiting the generality thereof, the following:

1. To adopt, amend, and repeal rules, policies and procedures for the regulation of its affairs and the conduct of its business;

2. To sue and be sued in its own name;

3. To have an official seal and power to alter that seal at will;

4. To maintain an office at such place or places within this state as it may designate;

5. To adopt, amend and repeal bylaws, rules and policies, not inconsistent with this act, to carry into effect the powers and purposes of the Authority and the conduct of its business;

6. To make and execute contracts with any individual, corporation, association or any other entity and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this act;

7. To employ underwriters, bond or other legal counsel, financial advisors, consultants, a financial institution to serve as trustee or paying agent or to serve in any fiduciary capacity in connection with any program, indenture or general resolution of the Authority, or any other experts and to determine their qualifications, duties and compensation subject to the provisions of this act for advice and oversight of the State Bond Advisor; provided, however, the Authority shall not employ or contract with any person, partnership, corporation, trust or other entity for underwriting services for issuance of bonded indebtedness if that entity has served as financial advisor to the Authority concerning the consideration of that issuance.

When engaging the services of underwriters, bond or other legal counsel, financial advisors, consultants, a financial institution to serve as trustee or paying agent or to serve in any fiduciary capacity in connection with any program, indenture or general

resolution of the Authority, or any other experts, the board shall be governed by the provisions of subsection C of Section 695.7 of Title 62 of the Oklahoma Statutes except when fees proposed for such services for the program shall fall within a range of fees as determined every six (6) months by the State Bond Advisor, based on industry studies and on fees for such services which have been negotiated and approved by the State Bond Advisor;

8. To procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable;

9. To borrow money and to issue bonds, whether or not the interest thereon is to be includable in the gross income of the recipients thereof for federal income tax purposes, including, without limitation, to provide on a pooled or consolidated basis financing for the purposes and projects herein provided and to provide for the security and sources of payments therefor;

10. To receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used and applied to carry out the purposes of this act subject to the conditions upon which the grants and contributions are made, including, but not limited to, gifts or grants from any department, agency or instrumentality of the United States or of the state for any purpose consistent with this act;

11. To obtain from any department or agency of the United States of America or nongovernmental insurer any insurance or guaranty as to, or of, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any bonds issued by the Authority, or on any municipal securities of political subdivisions purchased or held by the Authority; and, notwithstanding any other provisions of this act, to enter into any agreement or contract whatsoever with respect to any such insurance or guaranty, except to the extent that the same would in any way

impair or interfere with the ability of the Authority to perform and fulfill the terms of any agreement made with the owners of the bonds of the Authority;

12. To sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its property or any interest therein;

13. To provide financing assistance for the purposes and projects herein provided;

14. To acquire, purchase, hold, store, advertise, market, sell, trade, barter, exchange, distribute, transport, process, utilize and contract in all manner with respect thereto and for commodities, products and services, and real or personal property or any interest therein and to contract for, issue and utilize letters of credit and other credit facilities and incur indebtedness and to arrange, form, make, guarantee, issue, remit, receive, receipt, process and collect payments and equivalents, howsoever nominated, in connection with or for purposes of any of the foregoing and for the purpose of executing and fulfilling the purposes of the Authority;

15. To acquire, reacquire, construct, reconstruct, extend, rent, lease, purchase, use, loan, borrow, install, equip, maintain, operate, renovate, refurbish, enlarge, remodel, convey, sell, at public or private sale, encumber, alleviate, transfer, exchange, dispose of and/or resell, any property, real, personal or mixed, improvements, buildings, equipment, chattels, furnishings, fixtures, trade fixtures, and any and all other facilities and/or property of whatever nature, including any and all rights to or therein for use by corporations, individuals, cooperatives, partnerships, associations or proprietary companies for any of or for the purpose of executing and/or fulfilling the purposes of the Authority, and to plan, establish, develop, construct, enlarge, improve, extend, maintain, equip, operate, lease, furnish, provide, supply, regulate, hold, store and administer property, buildings, improvements, and

facilities of every nature, which may be useful in pursuing, promoting, executing and/or fulfilling the aforementioned purposes;

16. To the extent permitted under its contract with the owners of bonds, to consent to any modification with respect to rate of interest, time, and payment of any installment of principal or interest security or any other term of any contract, mortgage, contract or agreement of any kind to which the Authority is a party;

17. To purchase its own bonds at such price or prices as the Authority shall determine, subject to any agreement with the owners of bonds;

18. To enter into financial documents with others for the purpose of receiving revenues to pay the bonds authorized by this act; to lease, sell, or otherwise dispose of any or all of its projects to others for such revenues and upon such terms and conditions as the Authority may deem advisable, and to grant options to renew any financing agreement with respect to any or all of its projects and to grant options to buy any project at such price or prices as the Authority deems desirable;

19. To purchase obligations of the state or political subdivisions;

20. To collect fees and charges in connection with its loans, commitments and servicing, including, but not limited to, reimbursement of costs of financing as the Authority shall determine to be reasonable and as shall be approved by the Authority;

21. To provide services, technical assistance and advice to this state and political subdivisions and to enter into contracts with this state and political subdivisions to provide such services. The State of Oklahoma and its political subdivisions are hereby authorized to enter into contracts with the Authority for such services and to pay for such services as may be provided them;

22. To contract, cooperate, or join with any one or more other governments or public agencies, or with the state, any political

subdivisions of this state, or the United States, to perform any administrative service, activity, or undertaking which any such contracting party is authorized by law to perform, including the issuance of bonds;

23. To lend money or otherwise extend credit to any person and exercise all powers of a lender or creditor;

24. To invest any funds available to the Authority, whether or not from the proceeds of bonds, in such securities or pursuant to such agreements or other arrangements as the Authority shall determine, subject to any agreements with bond owners or other creditors of the Authority; and

25. To exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3927 of Title 70, unless there is created a duplication in numbering, reads as follows:

No member of the Authority, no member of the board and no officer or employee of the Authority may be subject to any personal liability or accountability for having acted within the course and scope of his membership, office or employment to carry out any power or duty pursuant to this act. The Authority shall indemnify any member of the Authority, any member of the board of the Authority and any employee of the Authority against expenses actually and necessarily incurred in connection with the defense of any action or proceeding in which he or she is made a party by reason of past or present association with the Authority and the subject of which was within the course and scope of the membership, office or employment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3928 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The Authority shall have the power and is hereby authorized to borrow money and to issue its bonds, notes, or other obligations in such principal amounts as the Authority determines shall be necessary to provide sufficient funds for:

1. The providing of financing assistance to institutions and entities within The Oklahoma State System of Higher Education as authorized under this act;

2. The establishment of reserves to secure the bonds; and

3. All other expenditures of the Authority incident to and necessary or convenient to carry out its purposes and powers, including the payment of any credit enhancement fees and costs of issuance incurred in connection with the issuance of bonds.

The Authority shall have the power to make expenditures for purposes of insuring and securing holders of bonds as provided in this act.

B. The Authority shall have the power to refund any bonds it issues, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. Refunding bonds may be issued in such amount as the Authority may determine, but not exceeding an amount sufficient to refund the principal amount of the bonds or notes to be refunded, together with any unpaid interest accrued and to accrue thereon and any premiums, expenses and commissions incurred in connection with the issuance of such refunding bonds and any reserve established in connection with the issuance of such refunding bonds. The refunding bonds may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded or exchanged for the bonds to be refunded, all as determined by the Authority.

C. All bonds of the Authority shall be either:

1. General obligations of the Authority, secured by any and all moneys and revenues of the Authority;

2. Special and limited obligations of the Authority, secured and payable solely out of the revenues and receipts derived pursuant to a financing agreement; or

3. Both general and special limited obligations, as may be designated in the proceedings of the Authority under which the bonds shall be authorized to be issued.

D. The bonds shall be authorized by resolution or resolutions of the Authority, shall be dated such date or dates, and shall mature at such time or times as such resolution or resolutions may provide. The bonds shall bear interest at such rate or rates or contain terms providing for the means of determining such rate or rates, including variations in such rates, but not to exceed an average interest rate of fourteen percent (14%) per annum if the interest thereon is not includable in the gross income of the recipients thereof for federal income tax purposes or eighteen percent (18%) per annum if the interest thereon is includable in the gross income of recipients thereof for federal income tax purposes, be in such denomination, be in such form, either coupon or registered, or in book-entry form, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such term of redemption, including redemptions prior to maturity, as such resolution or resolutions may provide. The bonds of the Authority may be sold by the Authority at public or private sale, and at the price or prices as the Authority shall determine.

E. Any resolution or resolutions authorizing any bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the owners thereof, as to:

1. Pledging all or any part of the revenues to secure the payment of the bonds or of any issue thereof, subject to such agreements with bondowners as may then exist;

2. Pledging all or any part of the assets of the Authority, including mortgages and obligations securing the same, to secure the payment of the bonds or of any issue of bonds, subject to the agreements with bondowners as may then exist;

3. The use and disposition of the gross income from assets of any type owned by the Authority and payment of principal of assets of any type owned by the Authority;

4. The setting aside of reserves or sinking funds and the regulations and disposition thereof;

5. Limitations on the purpose to which the proceeds of sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

6. Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; and the refunding of outstanding or other bonds;

7. The procedure, if any, by which the terms of any contract with bondowners may be amended or abrogated, the amount of bonds the owners of which must consent thereto, and the manner in which the consent may be given;

8. Vesting in a trustee such property, rights, powers and duties in trust as the Authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondowners pursuant to this act and limiting or abrogating the right of bondowners to appoint a trustee under this act or limiting the rights, powers, and duties of the trustee;

9. Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the Authority to the owners of the bonds and providing for the rights and remedies of the owners of the bonds in the event of default, including as a matter of right the appointment of a receiver; but the rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this act; and

10. Any other matters, of like or different character, which in any way affect the security or protection of the owners of the bonds.

F. Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenues, monies, or property so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Authority, irrespective of trust indenture or whether the parties have notice thereof. Neither the resolution, trust indenture nor any other instrument by which a pledge is created need be recorded.

G. Bonds of the Authority may be secured by resolution of the Authority or a trust indenture or similar document by and between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within or without the state. Such resolution, trust indenture or similar document may contain such provisions for protecting and enforcing the rights and remedies of the bondowners as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its corporate powers and the custody, safeguarding and application of all monies. The Authority may provide by the resolution or trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine.

H. Whether or not the bonds are of the form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code,

subject only to the provisions of the bonds relating to registration.

I. In the event that any of the members or officers of the Authority shall cease to be members or officers of the Authority prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

J. Neither the members of the Authority nor any other person executing the bonds issued under this act shall be subject to personal liability or accountability by reason of the issuance thereof.

K. The Authority shall have the power to provide for the replacement of lost, destroyed, or mutilated bonds.

L. Bonds issued pursuant to the provisions of this act shall never constitute an indebtedness of the state within the meaning of any state constitutional provision or statutory limitation, but such bonds shall be indebtedness payable solely from sources indicated on the bond documents, and shall never constitute nor give rise to a pecuniary liability of this state or unspecified funds of the Authority or a charge against the general credit of the state or taxing powers of the state, and such fact shall be plainly stated on the face of each bond.

M. 1. In no event shall the Authority enter into a lease-purchase agreement unless that agreement contains the following or similar language:

The State of Oklahoma reserves the right to approve any reoffering of this obligation to another investor either through private placement, issuance of certificates of participation, or any other mechanism. Such approval must be obtained, in writing, from the State Bond Advisor prior to any remarketing.

2. In the event that a remarketing of a lease-purchase agreement is proposed that includes the remarketing of securities or obligations to more than a single investor, any disclosure language prepared in connection with such marketing that describes the state's liability under the lease-purchase agreement must be approved in advance, in writing, by the Oklahoma State Bond Advisor.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3929 of Title 70, unless there is created a duplication in numbering, reads as follows:

The bonds authorized pursuant to the Oklahoma Higher Education Finance Authority Act and the income therefrom, whether or not the interest on which is subject to federal income taxation, shall be exempt from all taxation in this state; all legal instruments and all security agreements and financing agreements made pursuant to the provisions of this act shall be exempt from Oklahoma stamp, mortgage and transfer taxes.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3930 of Title 70, unless there is created a duplication in numbering, reads as follows:

The bonds, debentures, notes or other evidence of indebtedness of the Oklahoma Higher Education Finance Authority are hereby made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or who may hereafter be authorized to invest in bonds or other obligations of this state may properly and legally invest funds including capital in their control or belonging

to them. Notwithstanding any other provision of law, the bonds, debentures, notes or other evidence of indebtedness of the Authority are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state are authorized.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3931 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Higher Education Finance Authority shall be and is hereby exempt from all franchise, corporate, business and other taxes of any nature levied by the state,

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3932 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Authority may pledge to and agree with the owners of any bonds issued under this act that the Authority will not limit or alter the rights contained in the bond instruments to fulfill the terms of any agreements made with the owners thereof or in any way impair the rights and remedies of the owners until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the owners, are fully met and discharged. The Authority is authorized to include this pledge in any agreement with the owners of the bonds.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3933 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Authority may covenant and consent that the interest on certain of its bonds shall be includable under the Internal Revenue Code of 1986, as amended, or any subsequent corresponding internal

revenue law of the United States in the gross income of the owners thereof to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the owners thereof under said Internal Revenue Code or any such subsequent law. Nothing contained herein shall be construed to covenant or consent or to authorize any covenant or consent to the application of any other provision of any other laws, federal or state, to the Authority or to its bonds or to the elimination or modification in any way of any other exemption, privilege or immunity thereof.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3934 of Title 70, unless there is created a duplication in numbering, reads as follows:

This act shall be liberally construed. Nothing contained herein is or shall be construed as a restriction or limitation upon any powers which the Authority might otherwise have under any other law of this state heretofore or hereafter enacted, and the provisions of this act are cumulative to such powers. The provisions hereof do and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized and shall be regarded as supplemental and additional to powers conferred by any other laws.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3935 of Title 70, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any provision herein to the contrary, the Oklahoma Higher Education Finance Authority shall not participate in financing programs nor issue bonds for purposes which compete with or are similar in nature to those obligations authorized for issuance by the Oklahoma Turnpike Authority, the Oklahoma Housing Finance Agency, the Oklahoma Water Resources Board, the Grand River Dam Authority, the Oklahoma Student Loan Authority and the Oklahoma

Municipal Power Authority, without the prior consent of said authorities.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3936 of Title 70, unless there is created a duplication in numbering, reads as follows:

The activities of the Oklahoma Higher Education Finance Authority shall be included in and subject to annual audits of the Oklahoma State Regents for Higher Education.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3937 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Higher Education Finance Authority shall publish and present an annual report to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate setting forth in detail the operations and transactions conducted by it. The annual report shall specifically account for the ways the need, mission and programs of the Authority have been carried out, including but not limited to, a review of the results of the Authority's operations and transactions. The report shall recommend specific changes in the activities of the Authority which are necessary to better carry out its mission.

SECTION 18. AMENDATORY 60 O.S. 1991, Section 176, as last amended by Section 1, Chapter 173, O.S.L. 1998 (60 O.S. Supp. 1998, Section 176), is amended to read as follows:

Section 176. A. Express trusts may be created to issue obligations and to provide funds for the furtherance and accomplishment of any authorized and proper public function or purpose of the state or of any county or municipality or any and all combinations thereof, in real or personal property, or either or both, or in any estate or interest in either or both, with the state, or any county or municipality or any and all combinations thereof, as the beneficiary thereof by:

1. The express approval of the Legislature and the Governor if the State of Oklahoma is the beneficiary;

2. The express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a county is a beneficiary; ~~or~~

3. The express approval of two-thirds (2/3) of the membership of the governing body of the beneficiary if a municipality is a beneficiary; or

4. The express approval of two-thirds (2/3) of the membership of the governing body of each beneficiary in the event a trust has more than one beneficiary; provided, that no funds of a beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for the execution of the trust, except by express action of the legislative authority of the beneficiary prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management, or control of any property, real or personal or mixed, of the beneficiary of the trust, or of a proposed trust, which property shall be needful for the execution of the trust purposes, are authorized and empowered to lease the property for those purposes, after the acceptance of the beneficial interest therein by the beneficiary as hereinafter provided.

B. A municipality may convey title to real property which is used for an airport to the trustees of an industrial development authority trust whose beneficiary is the municipality. The industrial development authority trust must already have the custody, management, or control of the real property. The conveyance must be approved by a majority of the governing body of the municipality. A conveyance pursuant to this section may be made only for the sole purpose of allowing the authority to sell the property for fair market value when the property is to be used for industrial development purposes. Conveyances made pursuant to this

subsection shall be made subject to any existing reversionary interest or other restrictions burdening the property and subject to any reversionary interest or other restriction considered prudent by the municipality.

C. The trustees of a public trust having the State of Oklahoma as beneficiary shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the public trust. All bylaws of a public trust having the State of Oklahoma as beneficiary shall be submitted in writing to the Governor of the State of Oklahoma. The Governor must approve the proposed bylaws before they take effect.

D. No public trust in which the State of Oklahoma is the beneficiary may be amended without a two-thirds (2/3) vote of approval of the trustees of the trust; provided, that any amendment is subject to the approval of the Governor of the State of Oklahoma. Any amendments shall be sent to the Governor within fifteen (15) days of their adoption.

E. No trust in which a county or municipality is the beneficiary shall hereafter create an indebtedness or obligation until the indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of the beneficiary. In the event a trust has more than one beneficiary, as authorized by this section, the trust shall not incur an indebtedness or obligation until the indebtedness or obligation has been approved by a two-thirds (2/3) vote of the governing body of two-thirds (2/3) of the beneficiaries of the trust.

F. All bonds described in subsection E of this section, after December 1, 1976, except bonds sold to the federal government or any agency thereof or to any agency of the State of Oklahoma, shall be awarded to the lowest and best bidder based upon open competitive public offering, advertised at least once a week for two (2) successive weeks in a newspaper of general circulation in the county

where the principal office of the trust is located prior to the date on which bids are received and opened; provided, competitive bidding may be waived on bond issues with the approval of three-fourths ($3/4$) of the trustees, and a three-fourths ($3/4$) vote of the governing body of the beneficiary, unless the beneficiary is a county in which case a two-thirds ($2/3$) vote of the members of the governing body shall be required, or three-fourths ($3/4$) vote of the governing bodies of each of the beneficiaries of the trust, unless one of the beneficiaries is a county in which case a two-thirds ($2/3$) vote of the members of the governing body of such county shall be required. No bonds shall be sold for less than par value, except upon approval of three-fourths ($3/4$) of the trustees, unless the beneficiary is a county in which case a two-thirds ($2/3$) vote of the members of the governing body shall be required. In no event shall bonds be sold for less than sixty-five percent (65%) of par value; provided, however, in no event shall the original purchaser from the issuer of any bonds issued by any public trust for any purpose receive directly or indirectly any fees, compensation, or other remuneration in excess of four percent (4%) of the price paid for the bonds by the purchaser of the bonds from the original purchaser; and further provided, that the average coupon rate thereon shall in no event exceed fourteen percent (14%) per annum. No public trust shall sell bonds for less than ninety-six percent (96%) of par value until the public trust has received from the underwriter or financial advisor or, in the absence of an underwriter or financial advisor, the initial purchaser of the bonds, an estimated alternative financing structure or structures showing the estimated total interest and principal cost of each alternative. At least one alternative financing structure shall include bonds sold to the public at par. Any estimates shall be considered a public record of the public trust. Bonds, notes or other evidences of indebtedness issued by any public trust shall be eligible for purchase by any

state banking association or corporation subject to such limitations as to investment quality as may be imposed by regulations, rules or rulings of the State Banking Commissioner.

G. Public trusts created pursuant to this section shall file annually, with their respective beneficiaries, copies of financial documents and reports sufficient to demonstrate the fiscal activity of such trust, including, but not limited to, budgets, financial reports, bond indentures, and audits. Amendments to the adopted budget shall be approved by the trustees of the public trust and recorded as such in the official minutes of such trust.

H. Contracts for construction, labor, equipment, material or repairs in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid, which shall be published in the manner provided in the preceding section hereof; the advertisements shall appear in the county where the work, or the major part of it, is to be done, or the equipment or materials are to be delivered, or the services are to be rendered; provided, however, should the trustee or the trustees find that an immediate emergency exists, which findings shall be entered in the journal of the trust proceedings, by reason of which an immediate outlay of trust funds in an amount exceeding Seven Thousand Five Hundred Dollars (\$7,500.00) is necessary in order to avoid loss of life, substantial damage to property, or damage to the public peace or safety, then the contracts may be made and entered into without public notice or competitive bids; provided that the provisions of this subsection shall not apply to contracts of industrial and cultural trusts. Notwithstanding the provisions of this subsection, equipment or materials may be purchased by a public trust directly from any contract duly awarded by this state or any state agency under the Oklahoma Central Purchasing Act, or from any contract duly

awarded by a governmental entity which is the beneficiary of the public trust.

I. Any public trust created pursuant to the provisions of this section shall have the power to acquire lands by use of eminent domain in the same manner and according to the procedures provided for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes. Any exercise of the power of eminent domain by a public trust pursuant to the provisions of this section shall be limited to the furtherance of public purpose projects involving revenue-producing utility projects of which the public trust retains ownership; provided, for public trusts in which the State of Oklahoma is the beneficiary the exercise of the power of eminent domain may also be used for public purpose projects involving air transportation. Revenue-producing utility projects shall be limited to projects for the transportation, delivery, treatment, or furnishing of water for domestic purposes or for power, including, but not limited to the construction of lakes, pipelines, and water treatment plants or for projects for rail transportation. Any public trust formed pursuant to this section which has a county as its beneficiary shall have the power to acquire, by use of eminent domain, any lands located either inside the county, or contiguous to the county pursuant to the limitations imposed pursuant to this section.

J. Provisions of this section shall not apply to entities created under Sections 1324.1 through 1324.26 of Title 82 of the Oklahoma Statutes or Section 2 of this act.

SECTION 19. AMENDATORY 62 O.S. 1991, Section 41.14, is amended to read as follows:

Section 41.14 The Oklahoma State System of Higher Education, established by Article XIII-A of the Constitution of this state, shall operate an allotment system similar to the procedure set out in this act for other agencies of the state except that The Oklahoma State Regents for Higher Education shall be substituted for the

State Budget Director in connection with approving allotment requests of the constituent institutions comprising The Oklahoma State System of Higher Education. The account classification for The State System of Higher Education shall conform as nearly as possible with the classification of accounts recommended by the National Committee on Standard Reports for Institutions of Higher Education. The Board of Regents shall allocate to each institution under its control from the consolidated, or lump sum appropriation made by the Legislature, an amount sufficient to meet the needs and functions of each institution for the entire year as is now provided by law, or may hereafter be provided by law. The amount allocated to each institution for each fiscal year in accordance with Article XIII-A, Oklahoma Constitution, shall be made in a lump sum without regard to uniform budget or accounting classifications, but shall not be available for expenditure until subsequently allotted by the Regents in accordance with the uniform budget and accounting classifications recommended by the National Committee on Standard Reports. The amount of each allotment reserved pursuant to Section 3210 of Title 70 of the Oklahoma Statutes for the purpose of fulfilling contractual obligations of each institution with the Oklahoma Higher Education Finance Authority shall be indicated and shall not be available for expenditure by the institution. The Regents, with the approval of the Budget Director, may allot money to any constituent institution under said Regents to set up and operate a petty cash fund at said institution, said fund to be reimbursed upon the filing of claims showing the purposes for which the funds were expended. The Division of Central Accounting and Reporting shall make cash allocations of revenue in accordance with Section 23, Article 10, Constitution of Oklahoma, to each of the constituent institutions, considering the total allocation made by the Regents from the lump sum legislative appropriations as the total appropriation for each institution, in lieu of legislative

appropriations. All institutional income available for educational and general purposes, as defined in the uniform budget and accounting classifications recommended by the National Committee on Standard Reports, and including income defined by law as revolving fund income, shall operate as a continuing nonfiscal appropriation which may be spent for any educational and general purposes for which appropriated funds may be spent, if allocated and allotted as provided in this section; provided that the obligations as they are incurred may not exceed the unencumbered balance of cash on hand in accordance with Section 23, Article 10, Constitution of the State of Oklahoma. At least thirty (30) days prior to the beginning of each fiscal year, each of the constituent institutions shall file with the Regents its request for appropriation allotments for each of the purposes for which expenditures are to be made. Such requests shall be broken down to conform to the uniform budget or accounting classifications recommended by the National Committee on Standard Reports. Each institution's request for appropriation allotments shall show the amount required to finance each item of the request for the entire year and for each quarter or each six-months period within the fiscal year, as required by the Budget Director. The Regents, or their designated official or employee who has been authorized to approve itemize allotment requests, shall consider the allotment requests for the purpose of making a determination of: (1) that the current financial requirements of the institution concerned justify the allotment to be made; (2) that the accounting classification is sufficient to reflect the purpose for which expenditures are to be made and that such classification is in accordance with the budget classifications adopted by the Budget Director and the Regents, which shall conform as nearly as possible to the account classification recommended by the National Committee on Standard Reports for Institutions of Higher Education; (3) that the realization of estimated revenues determined by the Budget

Director is sufficient to allow the commitments to be made. In allotting appropriations and other funds, and approving subsequent allotments which may be required by each institution, the Regents shall follow the same general procedure set forth in this act for other agencies of the state not under the control of said Regents, except as otherwise provided in this section. All forms and account classifications shall be mutually agreed upon by the Budget Director and the State Regents. The Regents shall file approved requests of constituent institutions with the Division of Central Accounting and Reporting and such approved requests shall be entered on the records of the State in the same manner as is provided in this act for other agencies of the state. The State Regents and the Budget Director shall approve any request from the administrative head of a constituent institution for amendment of the approved schedule of positions and salaries, or transfers between items, so long as the currently approved allotment for such purposes is not exceeded; and each such amendment shall be filed with the Budget Director, in such detail as he may require, prior to the date on which the first payroll or other disbursement affected by such amendment is submitted for payment. In the event that the realization of estimated revenues at any time during the fiscal year indicates that the total revenue for that fiscal year to any state fund will be insufficient at the end of the fiscal year to meet the total appropriations from that fund, the State Budget Director shall notify the Oklahoma State Regents of Higher Education as to the amount of reduction necessary against the consolidated, or lump sum appropriations, made to the Regents. The Regents in making itemized allotments during the fiscal year, may reserve an amount sufficient to meet a reasonable failure of revenue until receipt of notice from the Budget Director that the realization of estimated revenues indicates that the total appropriation may be allotted for expenditure. Upon receipt of notice from the Budget Director of a

necessary reduction in the consolidated, or lump sum appropriation, to meet a failure in revenue, the Regents of Higher Education shall immediately take action to control the approval of subsequent allotment requests sufficient to make the aggregate reduction in allotments of all constituent institutions under their control equal the amount of reduction ordered against the lump sum appropriation made by the Legislature. Such reductions against the lump sum appropriation shall not exceed the percentage reduction ordered against other agencies of the state in accordance with Section 23, Article 10, Oklahoma Constitution.

SECTION 20. AMENDATORY 62 O.S. 1991, Section 695.8, as last amended by Section 2, Chapter 188, O.S.L. 1998 (62 O.S. Supp. 1998, Section 695.8), is amended to read as follows:

Section 695.8 A. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall:

1. Make determinations as to whether the purposes for which obligations proposed to be issued by a State Governmental Entity are for the furtherance and accomplishment of authorized and proper public functions or purposes of the state or of any county or municipality, as specified in the statutes governing public trusts organized pursuant to Title 60 of the Oklahoma Statutes;

2. Review proposed issuance of debt by State Governmental Entities for compliance with any applicable provisions of federal, state or other laws;

3. Review proposed issuances of obligations to fund capital additions or expenditures by Local Governmental Entities when there is a lease, contract, or other agreement used as collateral or security under which payments from the state made by any officer, department, board, commission, institution or agency of the state are for the retirement of such obligations. The provisions of this section do not apply to funds which are collected by the state for distribution to a Local Governmental Entity or are appropriated or

dedicated by the state to a Local Governmental Entity when there is no lease, contract, or other agreement used as collateral or security requiring payments by the state, which will be used to retire obligations of said Local Governmental Entity;

4. a. Except as provided in subparagraph b of this paragraph, review the findings of the Program Development and Credit Review Committee to determine if the Rules Regarding the Administration of the Credit Enhancement Reserve Fund and related regulations and policies as implemented by the Oklahoma Development Finance Authority adequately and sufficiently fulfill the intents and purposes of the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes, provided such provision shall not apply to Credit Enhancement Reserve Fund applications approved by the Bond Oversight Commissions prior to May 30, 1990; and, except as provided in subparagraph b of this paragraph, approve or disapprove any bonds or indebtedness being issued by the Oklahoma Development Finance Authority to the extent said bonds or indebtedness are enhanced or supported pursuant to the Credit Enhancement Reserve Fund Act, Section 5063.1 et seq. of Title 74 of the Oklahoma Statutes.
- b. The Bond Oversight Commissions shall not be required to review or approve individual projects or loans under the Small Business Credit Enhancement Program created by Section 5063.4b of Title 74 of the Oklahoma Statutes, or the Oklahoma Beginning Agricultural Producer Pool Act, Section 5063.21 et seq. of Title 74 of the Oklahoma Statutes, but may approve a package of such projects or loans in advance. Each project or

loan shall be individually listed in the package and the dollar amount of the project or loan shall be specifically set out together with the total dollar amount involved in the package. The Commissions or the Oklahoma State Bond Advisor may, in their discretion, remove any such individual project or loan from the package submitted, for individual action. Should the Oklahoma Development Finance Authority submit an application to the Commissions for the approval of an obligation or credit enhancement under these two programs, the application shall be deemed approved if not disapproved by the Commissions within forty-five (45) days of filing such an application or, as to an individual project or loan, removed from the submitted package within such forty-five-day period.

- c. The Executive and Legislative Bond Oversight Commissions may establish maximum compensation levels to be paid to individuals and firms acting in a fiduciary capacity in connection with Credit Enhancement Reserve Fund Program financings. The Executive and Legislative Bond Oversight Commissions may set such compensation levels for a one-year period and such compensation will be applicable to all individuals and firms participating in the program for that period. Providers of such services selected prior to making application may be employed subject to the established maximum compensation levels. Prior to December 31 of each year, the Executive and Legislative Bond Oversight Commissions shall review market conditions and set new compensation levels for the program. Provided, such compensation levels may not exceed the compensation levels obtained by the

Oklahoma Development Finance Authority through its most recent invitation to bid for the services of individuals and firms acting in a fiduciary capacity in connection with Credit Enhancement Reserve Fund Program financing; ~~and~~

5. Conduct an annual programmatic review of the operations of the Oklahoma Higher Education Finance Authority; and

6. Adopt, amend and repeal rules to regulate affairs of the Commissions and to implement the powers and purposes of the Commissions.

B. The Commissions may establish budgets in order to fulfill their duties pursuant to Section 695.1 et seq. of this title and shall be authorized to charge and collect a fee, in accordance with the rules of the Commissions, derived from proceeds of bond issues approved by the Commissions.

SECTION 21. AMENDATORY 70 O.S. 1991, Section 3210, is amended to read as follows:

Section 3210. (a) All appropriations made by the Legislature for state educational institutions of the State System shall be made to the State Regents in consolidated form, indicating the amount appropriated from the General Revenue Fund and each special fund, without reference to the amount appropriated to any particular institution. On April 1 of each year, or as soon thereafter as possible, but not later than June 15 of each year, the State Regents shall certify to the Director of State Finance such portions of the consolidated appropriation as they shall have allocated to each institution from the General Revenue Fund and each special fund for the next fiscal year and the amount of the allocation for each institution which is to be reserved for the purpose of fulfilling contractual obligations of each institution with the Oklahoma Higher Education Finance Authority. The Director of State Finance shall allocate the revenue deposited in the State Treasury to the credit

of the General Revenue Fund to a cash account for each institution or special appropriation, and to any unallocated portion of such consolidated appropriations, on a percentage basis in the same manner as provided by law for allocations of cash to Legislative appropriations for other departments and institutions. In making such allocations to cash accounts for each institution the Director of State Finance shall reserve a portion of each allocation in the amounts indicated by the Regents in their certification which shall be placed in an account for the State Regents to be used only for making payments to the Oklahoma Higher Education Finance Authority for contractual obligations of the institutions.

(b) The State Regents may make additional allocations from the consolidated appropriation to any institution during the year but they shall not decrease the amount allocated to any institution during the year. Where an additional allocation is made to an institution, the Director of State Finance shall make such adjustment by decreasing the consolidated appropriation balance and increasing the appropriation of the institution or institutions to which the additional allocation is made. At the same time he shall make an adjustment between the cash accounts by reducing the consolidated cash account and increasing the institution's cash account, giving the institution or institutions credit in cash for that portion of revenue which has already been allocated to that portion of the consolidated appropriation transferred, thereby transferring the percentage of cash which belongs to the additional allocation made from the consolidated appropriation. Thereafter, the Director of State Finance shall increase the revenue allocations to each of the educational institutions which have received additional allocations so that such allocations shall take into consideration the original allocation plus the additional allocation from the consolidated appropriation. The State Regents may make additional allocations each month of the fiscal year but such

allocations for all institutions shall be certified to the Director of State Finance at the same time and shall not take effect until the first day of the month following the month in which such additional allocations are certified to the Director of State Finance. The cash allocated to all of the institutions shall never exceed the amount of revenue which would have been allocated to the consolidated appropriation had such consolidated appropriation never been divided. The division of cash among the several institutions shall be considered a division of the revenue which would have been allocated to the consolidated account.

(c) Both the cash allocations and the appropriation allotments shall be considered cumulative in that the balance unexpended or unencumbered at the end of any month of the fiscal year shall add to the amount allocated during the subsequent months so that the fiscal year shall be considered as a unit.

(d) The appropriations allocated by the State Regents to each institution for the year on June 15 shall be set up in the same manner as other departments and institutions for contractual purposes except as otherwise provided in this section.

(e) Financial documents arising from the appropriation allocations to each institution shall be filed with the Director of State Finance in the same manner and at the same time as is now provided by law.

(f) Nothing contained in this section shall be construed to change existing laws relating to the apportionment of cash to Section 13 or New College Funds for each of the institutions which under present laws receive monies from such sources. Provided, that nothing herein shall be construed to give the State Regents authority to take money from the revolving fund of one institution and give it to another institution. Revolving funds of all of the constituent institutions shall operate as a continuing appropriation under the law creating each such revolving fund which allocates the

revenue collected by each such institution to the revolving fund of that institution. None of such institutions shall incur obligations against such revolving fund in excess of the unencumbered balance of surplus cash on hand. Such revolving funds shall be nonfiscal year appropriations, and shall be disbursed by warrants issued by the State Treasurer.

(g) No expenditure from any of the revolving funds of the various institutions shall be made for any purpose, except that for which said portion of said fund was specifically collected; provided, that when any portion of any of such revolving funds shall not be needed for the purpose for which the same was collected, the State Regents may, upon the request of the Board of Regents of any institution, authorize such Board of Regents to expend such unneeded balance of such revolving fund for any other purpose which, in the opinion of the State Regents, shall be necessary or desirable in the conduct of such institution.

(h) The Director of State Finance shall make monthly reports to the institutions and agencies comprising the State System indicating, by classification of funds, the amounts allotted by the State Regents, the cumulative expenditures at the end of each month, the unexpended balances, the encumbrances outstanding, and the unencumbered balances at the end of the month.

(i) The State Regents shall direct the disposition of such funds as the Legislature shall appropriate, which funds shall be allocated to the state educational institutions entitled thereto under the provisions of, and in accordance with, the Enabling Act and the Constitution of the State of Oklahoma, for the support of such state educational institutions.

SECTION 22. AMENDATORY 70 O.S. 1991, Section 4001, is amended to read as follows:

Section 4001. A. Subject to and in accordance with the terms hereof, the boards of regents for all state educational institutions

for and in behalf of any university, college, school or institution under the jurisdiction of each of the said boards are hereby authorized from time to time to set aside such portion of their respective campuses or of the campuses under the jurisdiction of said boards, or any other land owned or leased by said boards, as may be necessary and suitable for the construction thereon of dormitories, student housing, cooperative group housing, parking facilities, adult education facilities, kitchens, dining halls, auditoriums, student union buildings, field houses, stadiums, public utility plants and systems for the supplying of water, gas, heat or power and other self-liquidating projects and other revenue-producing buildings for the university, college or institution or related institution, which may include public, nonprofit or private entities, deemed necessary by said boards for the comfort, convenience and welfare of their students, and suitable for the purposes for which said institutions were established, including additions to existing buildings used for such purposes; to acquire through construction, purchase, condemnation or any combination thereof such dormitories, student housing, cooperative group housing, parking facilities, adult education facilities, kitchens, dining halls, auditoriums, student union buildings, field houses, stadiums, public utility plants and systems and other revenue-producing buildings and acquire or construct additions, improvements and extensions to existing buildings and structures used for such purposes and to equip, furnish, maintain and operate all such buildings and structures; and to acquire through purchase, condemnation or otherwise any land, rights-of-way, easements, licenses and permits needed for the present or future use of such buildings, structures, plants and systems; provided, that such boards of regents shall not construct or acquire, for their respective institutions, such utility plants or systems whose capacity is in excess of the present or reasonably contemplated

future needs of such institutions or related institutions, except as provided in subsection C hereof.

B. When in the opinion of the board of regents of any such institution any of the buildings, structures, plants and systems constructed, acquired, improved, extended, added to, furnished or equipped as above authorized are deemed necessary by the said board for the comfort, convenience and welfare of the student body as a whole, or for any specified class or part thereof, the board of regents shall have authority to charge and collect from all students in attendance at the university, college, school or institution, or related institutions, or from any specified class or part thereof for which such facilities are so deemed necessary, fees and charges for the use or availability of such buildings and structures and for the services or commodities to be made available by such plants, systems or facilities. The proceeds of all such fees and charges shall be considered as revenues within the meaning of Section 4004 of this title and the provisions of said section shall be applicable thereto. Where the commodities and services supplied by any such plant and system temporarily shall be found to be in excess of the requirements of the university, college, school or institution, or related institutions, the board of regents may sell the surplus to other public or nonprofit consumers, including incorporated municipalities, and in that connection may enter into such agreements as it may consider advisable. All revenues received from the sale of such surplus shall likewise be considered and treated as other revenues under Section 4004 of this title. Such board of regents may also enter into agreements for the purchase of water, electricity, gas, heat, or power to be distributed through the medium of any such plant or systems, provided only that no agreement entered into under the provisions of this paragraph shall pledge the credit of the State of Oklahoma.

C. Other state agencies or subdivisions of the state may enter into cooperative agreements with the regents of the universities or colleges on projects for the primary benefit of such university or college, and make use of facilities and services financed by bonds issued by the university or college, as authorized herein and under the terms and conditions of this section.

D. It is the intent of the Legislature that no additional public trusts having the state as beneficiary be created to finance the purchase of land or facilities or the construction of facilities at institutions of The Oklahoma State System of Higher Education or their agencies and that no beneficial interest in a public trust be accepted on behalf of the State of Oklahoma or any agency thereof involving an institution of higher learning; and that no additional projects be authorized for existing public trusts having the state as beneficiary now operating for the direct or indirect benefit of any institution of The Oklahoma State System of Higher Education or its agencies, except that the heating-cooling plant at the Oklahoma Health Sciences Center may be repaired or expanded, if approved by the Oklahoma State Regents for Higher Education and except as provided in Section 4017 of this title and in the Oklahoma Higher Education Finance Authority Act.

SECTION 23. AMENDATORY 74 O.S. 1991, Section 85.4, as last amended by Section 3, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1998, Section 85.4), is amended to read as follows:

Section 85.4 A. Except as provided in Section 85.12 of this title, every state agency shall make all acquisitions used, consumed or spent by the state agency in the performance of its official functions by the presentation of requisitions to the Purchasing Division established in Section 85.3 of this title and no acquisitions shall be acquired by any state agency for such use or consumption except by the presentation of the requisition and receipt of the acquisitions requisitioned through the Purchasing

Division. The provisions of the Oklahoma Central Purchasing Act shall not preclude the acceptance of gifts and donations in the manner now authorized by law or the purchase of any acquisition by any state agency acting for itself and without presentation of a requisition when such acquisition is authorized in writing by the State Purchasing Director. Subject to the provisions of this section, every state agency shall have the authority to determine its own quantitative needs for acquisitions, insofar as it has such authority under existing law and shall have the authority to determine the general class or nature of acquisitions, subject to the provisions of Section 85.5 of this title.

B. The Director of the Department of Central Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of the Department of Central Services to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

C. 1. Each requisition required by this section for the acquisition of any product shall be accompanied by a statement signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying:

- a. the product requested is necessary to the agency's responsibilities,
- b. the amount of the product requested is not excessive, and
- c. the justification for the purchase of the product.

2. Each requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements pursuant to Section 85.7 of this title shall be accompanied by a statement signed by the chief administrative officer of the state

agency or the chief administrative officer of the requisitioning unit of the state agency certifying that:

- a. no employee of the state agency is able and available to perform the services called for by the contract,
- b. the state agency shall receive, review and accept a detailed work plan from the contractor for performance pursuant to the contract if requested by the State Purchasing Director,
- c. the state agency has developed, and fully intends to implement, a written plan providing for the assignment of specific state agency personnel to:
 - (1) a monitoring and auditing function,
 - (2) the periodic review of interim reports, or other indications of past performance, and
 - (3) the ultimate utilization of the final product of the nonprofessional or professional services if requested by the State Purchasing Director,
- d. the work to be performed under the contract is necessary to the state agency's responsibilities, and there is statutory authority to enter into the contract,
- e. the contract will not establish an employment relationship between the state or the state agency and any persons performing under the contract,
- f. no current state employee will engage in the performance of the contract, unless specifically approved by the State Purchasing Director; and
- g. the purchase of the nonprofessional or professional services is justified.

3. When a state agency requisitions acquisitions that are to be supplied in components or phases, the requisition shall list each component or phase and the same shall be included on the Invitation

to Bid. The determination of the lowest and best bid or best value bid, as required by the Oklahoma Central Purchasing Act, shall include all component or phase deliveries and shall not be based solely on the first component or phase delivery. State agencies may issue change orders to increase a purchase order for an acquisition not to exceed ten percent (10%) of the original purchase order total price.

D. Any person certifying the information required by subsection C of this section who knows such information to be false, upon conviction, shall be deemed guilty of a misdemeanor and shall be punished by fine or imprisonment or both fine and imprisonment pursuant to the provisions of Section 85.15 of this title and civilly liable for the amount of the contract.

E. The State Purchasing Director may request any additional information necessary to adequately review the requisitions and the statements required pursuant to subsection C of this section and compliance with the Oklahoma Central Purchasing Act.

F. Upon a determination that an acquisition is not necessary, is excessive or is not justified, the State Purchasing Director shall deny the requisition.

G. 1. No state agency shall enter into a lease-purchase agreement if title is acquired to tangible property of any class or nature by making lease, rental, or any other type payments, except as specifically authorized by law or by a governing board of regents as to institutions of The Oklahoma State System of Higher Education and except insofar as data processing equipment or other equipment is concerned; provided, however, the lease-purchase of data processing or other equipment by any state agency, whether or not the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

2. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to determine the most cost-effective method for obtaining financing for lease-purchase agreements, which may be financed by either negotiated sale or competitive bid. If the Executive Bond Oversight Commission and the Legislative Bond Oversight Commission determine that the lease-purchase of personal or real property should be financed through negotiated sale, the financing shall be subject to the provisions of the Oklahoma Bond Oversight and Reform Act, 62 O.S. 1991, Section 695.1 et seq. Unless said Commissions determine that the sale should be executed on a negotiated basis, such financing shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

3. Regardless of the method of financing, the acquisition price of personal property subject to a lease-purchase agreement shall be processed by competitive bids through the Purchasing Division of the Department of Central Services.

H. No state agency shall enter into a lease-purchase contract between the state agency as lessee and a private party as lessor if the contract is not capable of complete performance within the current fiscal year in which the contract was entered into unless a valid nonappropriation clause is included in the contract. Such contracts shall contain the following or substantially similar language:

Lessee shall have the right to terminate this lease, in whole but not in part, at the end of any fiscal year of lessee, if the Legislature fails to allocate sufficient funds to lessee for the rental payments required under this lease.

I. 1. No change order or addendum can be made to a lease-purchase agreement which extends the term or life of the original bid contract. Any lease-purchase agreement requiring such extensions or refinancing shall be readvertised and processed in

accordance with the provisions of the Oklahoma Central Purchasing Act.

2. All state agencies, whether or not the state agency is subject to the provisions of the Oklahoma Central Purchasing Act, shall prepare a list of all tangible personal property which it is acquiring by a lease-purchase method and, prior to the renewal of a lease-purchase agreement, shall evaluate the rate being paid under the current lease-purchase agreement against rates currently being received by the Purchasing Division of the Department of Central Services on a competitive bid basis to determine whether or not refinancing of the property will benefit the state. Any state agency which elects not to submit a requisition for a possible refinancing when the existing rates are at least one percent (1%) above rates being currently bid, and when the total sum to be paid for the property including principal and interest will be reduced, must submit a written justification to the State Purchasing Director stating the reasons for not attempting to refinance the property. The Purchasing Director shall forward all such justifications to the Chairman of the Appropriations Committee of the Senate and the Chairman of the Committee on Appropriations and Budget of the House of Representatives no later than February 1 of each year.

3. Unless otherwise provided by law, no state agency shall enter into a lease-purchase agreement for real or personal property costing less than Fifty Thousand Dollars (\$50,000.00). Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

4. a. Unless otherwise provided by law, the maximum term of a state agency lease-purchase agreement shall be the lesser of the useful life of real or personal property subject to a lease-purchase agreement as determined by the State Purchasing Director, or three (3) years for personal property and ten (10) years for real

property, respectively. Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

- b. The Executive Bond Oversight Commission and the Legislative Bond Oversight Commission shall have the authority to extend the term of a lease-purchase agreement beyond three (3) years for personal property and ten (10) years for real property if the State Purchasing Director determines that the useful life of the property exceeds said terms and the Oklahoma State Bond Advisor recommends the extension as being in the best interests of the State of Oklahoma.

5. Unless otherwise provided by law, state agency real property acquisitions subject to lease-purchase agreements shall be explicitly authorized by the Legislature. Acquisitions of real property authorized by the Legislature, unless otherwise exempted by the Legislature, shall be subject to the competitive bid provisions of the Oklahoma Central Purchasing Act. If a state agency is authorized to enter into a lease-purchase agreement for real property, the financing of such acquisition, including acquisitions deemed desirable for executing a lease-purchase, certificate of participation, or similar agreement or obligation, shall be obtained in accordance with the provisions of the Oklahoma Central Purchasing Act. The State Purchasing Director shall consult with the Oklahoma State Bond Advisor on the preparation, evaluation, and negotiation of such financing. Legislative authorization shall constitute legal authorization for this state or state agencies to enter into such lease-purchase agreements. Institutions of The Oklahoma State System of Higher Education shall be exempt from this provision.

J. The State Purchasing Director may permit leasing of products by state agencies if such leasing is determined by the State Purchasing Director to be in the best interest of the state,

provided that such leasing must be processed by competitive bids through the State Purchasing Director except as to those acquisitions exempt under Section 85.12 of this title.

K. 1. In no event shall a state agency enter into a lease-purchase agreement unless that agreement contains the following or similar language:

The State of Oklahoma reserves the right to approve any reoffering of this obligation to another investor either through private placement, issuance of certificates of participation, or any other mechanism. Such approval must be obtained in advance, in writing, from the Oklahoma State Bond Advisor prior to any remarketing.

2. In the event that a remarketing of a lease-purchase agreement is proposed that includes the remarketing of securities or obligations to more than a single investor, any disclosure language prepared in connection with such marketing that describes the state's liability under the lease-purchase agreement must be approved in advance, in writing, by the Oklahoma State Bond Advisor.

L. 1. Whenever it appears advantageous to the state or any state agency to purchase or otherwise acquire any acquisition which may be offered for sale by the government of the United States of America or any agency thereof, the State Purchasing Director may enter into a contract for the acquisition with the federal government or with any federal agency charged with the sale or disposition of such equipment, supplies, material, or other property, and the State Purchasing Director shall be authorized to execute such contract.

2. Should the regulations of the federal government, or any agency thereof handling the disposition and sale of any equipment, supplies, materials, or other property which it would be advantageous to the state to purchase, require that partial or full payment be made at the time sale is effected and before the

equipment, supplies, material, or other property will be delivered, the State Purchasing Director, upon requisition by the requesting party, shall draw a state warrant against the funds of the department or agency payable to the United States of America or its proper agency. The warrant shall be in such amount as may be necessary to meet the terms and conditions of sale without requiring a certificate showing that the equipment, supplies, material, or other property has actually been delivered to the state department or other agency in whose behalf the purchase is being negotiated.

M. Provided, the acquisition of equipment by an institution or entity within The Oklahoma State System of Higher Education through the Oklahoma Higher Education Finance Authority shall not be subject to the provisions of this section.

SECTION 24. AMENDATORY 74 O.S. 1991, Section 85.12, as last amended by Section 7, Chapter 371, O.S.L. 1998 (74 O.S. Supp. 1998, Section 85.12), is amended to read as follows:

Section 85.12 A. The provisions of this section shall not be construed to affect any law relating to fiscal or accounting procedure except such as may be directly in conflict herewith; and all claims, warrants and bonds shall be examined, inspected and approved as now provided by law.

B. The following acquisitions shall not be included within the purview of the Oklahoma Central Purchasing Act, except for Section 85.39 of this title:

1. Food and other products produced by state institutions and agencies;

2. Contracts for construction of new buildings and for the repair, maintenance or modernization of old buildings by institutions of The Oklahoma State System of Higher Education;

3. The printing or duplication of publications or forms of whatsoever kind or character by state agencies, which service is performed upon their own equipment, by their own employees. In

order to be exempt from Purchasing Division processing pursuant to this paragraph, the state agency may only use equipment owned or leased by the agency and may only utilize that equipment for printing services required by the agency in performing duties imposed upon the agency or functions authorized to be performed by the agency. Any use of the equipment by the agency pursuant to an agreement or contract with any other entity resulting in delivery of intermediate or finished products to the entity purchasing or using the products shall be subject to the provisions of the Oklahoma Central Purchasing Act;

4. Acquisitions by institutions of The Oklahoma State System of Higher Education, the Oklahoma State Regents for Higher Education, or the University Centers subject to the State Regents insofar as such acquisitions relate to textbooks, laboratory supplies, instructional materials, and specialized laboratory equipment, or to acquisitions for the telecommunications network known as OneNet, whether said network is governed or operated by the State Regents or any other state entity assigned responsibility for OneNet;

5. Department of Transportation and Transportation Commission contractual services or right-of-way purchases. Contracts awarded pursuant to bids let by the Transportation Commission for the maintenance or construction of streets, roads, highways, bridges, or underpasses, or any other transportation facilities under the control of the Department of Transportation, the acquisitions of equipment or materials accruing to the Department of Transportation required in Federal-Aid contracts, and contracts for public service type announcements initiated by the Department of Transportation. Contractual services as used herein shall not include advertising or public relations or employment services;

6. Utility services where rates therefor are regulated by a state or federal regulatory commission, or by city ordinance or by

an Indian Tribal Council for use by the Department of Corrections only;

7. Acquisitions by the University Hospitals and the University Hospitals Authority. The Authority shall develop standards for the acquisition of products and services and may elect to utilize Central Purchasing when appropriate. Such standards shall foster economy, short response time, and shall include appropriate safeguards and written records to ensure appropriate competition and economical and efficient purchasing, and shall be approved by the Director of Central Purchasing;

8. Contracts for custom harvesting by the Department of Corrections for the Department or its institutions;

9. Contracts with private prison contractors which are subject to the contracting procedures of Section 561 of Title 57 of the Oklahoma Statutes;

10. Purchases by the Oklahoma Municipal Power Authority;

11. Acquisitions by the Grand River Dam Authority;

12. Purchases by rural water, sewer, gas or solid waste management districts created pursuant to Section 1324.1 et seq. of Title 82 of the Oklahoma Statutes;

13. Purchases by the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority or the Midwestern Oklahoma Development Authority;

14. Contracts entered into by the Oklahoma Industrial Finance Authority for the services of an appraiser or for acquisition of insurance when the Authority's Board of Directors determines that an emergency exists, and for the services of legal counsel when approved by the Attorney General;

15. Expenditure of monies appropriated to the State Board of Education for the purpose of Local, State-supported Programs and State-supported Programs except monies appropriated for the

Administrative and Support Functions of the State Department of Education;

16. Expenditure of monies appropriated to the State Department of Rehabilitation Services for educational programs or educational materials for the Oklahoma School for the Blind and the Oklahoma School for the Deaf;

17. Contracts entered into by the Oklahoma Department of Vocational and Technical Education for the development, revision, or updating of vocational curriculum materials, and contracts entered into by the Oklahoma Department of Vocational and Technical Education for training and supportive services that meet the needs of new or expanding industries;

18. Contracts entered into by the Oklahoma Center for the Advancement of Science and Technology for professional services;

19. Contracts entered into by the Oklahoma Department of Commerce pursuant to the provisions of Section 5066.4 of this title;

20. Purchases made by the Oklahoma Historical Society from monies used to administer the White Hair Memorial;

21. Purchases of products available to an agency through a General Services Administration contract or other federal contract if the item is on current statewide contract and the terms of such contract are more favorable to the agency than the terms of a statewide contract for the same products as determined by the Director of Central Purchasing;

22. Contracts for managed health care services entered into by the state entity designated by law or the Department of Human Services, as specified in paragraph 1 of subsection A of Section 1010.3 of Title 56 of the Oklahoma Statutes;

23. Purchases of products by the Forestry Service of the State Department of Agriculture as authorized by the federal General Services Administration through a General Services Administration contract or other federal contract if the item is not on current

statewide contract or the terms of such federal contract are more favorable to the agency than the terms of a statewide contract for the same products;

24. Purchases or acquisitions of clothing for clients of the Department of Human Services and purchases and acquisitions of food for group homes operated by the Department of Human Services;

25. Purchases made or contracts entered into by the Oklahoma Energy Resources Board;

26. Purchases or acquisitions of clothing for juveniles in the custody of the Office of Juvenile Affairs and purchases and acquisitions of food for group homes operated by the Office of Juvenile Affairs;

27. State contracts for flexible benefits plans pursuant to the Oklahoma State Employees Benefits Act, Section 1361 et seq. of this title;

28. Expenditures incurred by the Department of Securities to investigate, initiate, or pursue administrative, civil, or criminal proceedings involving potential violations of the acts under the Department's jurisdiction;

29. Acquisitions by the Native America Cultural and Educational Authority and acquisitions by the Oklahoma Department of Commerce to assist the Native American Cultural and Educational Authority pursuant to Section 5017 of this title; ~~and~~

30. Acquisitions for resale in and through canteens operated pursuant to Section 537 of Title 57 of the Oklahoma Statutes; and

31. Acquisitions by institutions and entities of The Oklahoma State System of Higher Education of equipment and other personal property made through the Oklahoma Higher Education Finance Authority.

C. Notwithstanding the exclusions provided herein, any agency or common school of Oklahoma, any municipality of the state, any rural fire protection district, and county officers may, unless the

contract with the state specifies otherwise, avail themselves of the Purchasing Division statewide contracts and the services of the State Purchasing Director. Provided further, however, that any subdivision of government and any rural fire protection district of the state may designate the State Purchasing Director as its agent for the purchase or procurement of any acquisition from a statewide contract or otherwise available to the state.

D. Notwithstanding the exclusions provided herein, the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority shall be subject to approval by the Director of the Department of Central Services, and the State Purchasing Director shall make periodic audits of the purchasing policies and procedures of the Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the University Hospitals Authority, and the Midwestern Oklahoma Development Authority to ensure that said purchasing policies and procedures, as approved, are being followed.

SECTION 25. This act shall become effective November 1, 1999.

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