

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1093

By: Bengé and Newport of the
House

and

Morgan and Crutchfield of
the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to medical research facility development; defining terms; requiring solicitation of proposals by University Hospitals Authority for nationally competitive medical research facility; prescribing requirements related to proposals; requiring solicitation process to begin within specified time period; authorizing and directing acquisition of certain real property; imposing certain limitations upon University Hospitals Authority prior to certain validation; providing for transfer of real property by certain owner; providing for ability to convey real property based upon agreement with University Hospitals Authority; exempting real property transfer from certain requirements; exempting University Hospitals Authority from requirements related to competitive bidding or solicitation of proposals; authorizing use of certain funds to acquire real property; providing acquisition and improvement of property in furtherance of governmental purpose; making legislative findings; providing use of funds deemed to be in furtherance of public purpose; providing for authorized use of real property pursuant to lease agreement; authorizing economic development agreement; authorizing construction of improvements by qualified medical research entity; requiring transfer of title to real property by University Hospitals Authority under certain circumstances; providing for computation of purchase price according to certain method; prescribing procedures related to transfer of title to real property to qualified medical research entity; authorizing University Hospitals Authority to conduct certain economic analysis; providing immunity from liability based upon analysis; requiring issuance of obligations providing net proceeds equal to certain amount; providing for disposition of proceeds; providing obligations to be issued within certain statutory limit; making legislative findings regarding use of public funds and proceeds from issuance of obligations; making legislative findings regarding economic benefits resulting from activities of

qualified medical research entity; requiring validation of certain transactions by Oklahoma Supreme Court; providing for original jurisdiction for purposes of validation; providing procedures related thereto; amending 63 O.S. 2001, Sections 3208, 3215 and 3217, which relate to powers of the University Hospitals Authority; modifying provisions related to issuance of bonds; modifying provisions related to sources of revenue for repayment of obligations; modifying references to income sources; providing for codification; and declaring an emergency.

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 3230 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Authority" means the University Hospitals Authority;
2. "Economic development agreement" means an agreement between the Authority and a qualified medical research entity containing the economic development obligations of the parties pursuant to this section and Section 3208 of Title 63 of the Oklahoma Statutes, including, but not limited to, obligations with respect to job creation and development of a nationally competitive medical research facility;
3. "Lease" means that agreement executed by the Authority and by the qualified medical research entity with respect to the real property described by subsection B of this section;
4. "Nationally competitive medical research facility" or "facility" means the real property acquired pursuant to this act and the improvements constructed by or for the benefit of the qualified medical research entity during the period of the lease; and
5. "Qualified medical research entity" or "entity" means a corporation organized pursuant to Oklahoma law and having exempt

status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that:

- a. has been incorporated for a period of at least fifty (50) years prior to the effective date of this act,
- b. is actively engaged in biomedical research activity within the State of Oklahoma as of the effective date of this act,
- c. has a primary purpose and focus of conducting peer-reviewed basic biomedical research,
- d. owns assets with a fair market value of at least Fifty Million Dollars (\$50,000,000.00),
- e. engages the service of no fewer than four hundred (400) persons who are actively engaged in, or whose work provides support to, medical or biomedical research consisting of basic research, applied research or other research activity as of the effective date of this act and which anticipates engaging the services of at least one hundred fifty (150) additional persons for such research over the period of fifteen (15) years from the effective date of this act, and
- f. has received, during the three (3) years prior to the effective date of this act, a minimum of Fifteen Million Dollars (\$15,000,000.00) in grants from the National Institutes of Health.

B. The Authority shall solicit proposals from qualified medical research entities for a nationally competitive medical research facility. The Authority shall require the proposals to include, but not be limited to, the following:

1. Proposals for the facility, including, but not limited to, provisions for acquisition of real property and construction of improvements thereon by the Authority; and

2. Proposals for terms of a lease of the facility between the Authority and the entity. The proposed lease shall include provisions by which the entity shall utilize the facility including, but not limited to, office and laboratory space for basic biomedical research, applied biomedical research and other forms of targeted medical research activity. The proposed lease shall include provisions for construction of improvements to the facility during the term of the lease by the entity. The proposed lease shall include provisions by which lease payments are used to make payments of principal and interest on any obligations issued by the Authority pursuant to subsection L of this section. The proposed lease shall include provisions by which title to the facility shall be transferred to the entity upon expiration of the lease or at some earlier time, subject to terms of the economic development agreement. The proposed lease shall include provisions for liquidated damages in favor of the Authority in the event of default by the entity, which shall not include the Authority retaining title to the facility.

C. The Authority shall solicit proposals as provided by subsection B of this section as soon as practical after the effective date of this act. Upon acceptance of a proposal that the Authority, in its discretion, deems best under the provisions of this act, the Authority is hereby authorized and directed to acquire real property and make such improvements thereon as are consistent with and to effectuate the purposes of this act, but in no event shall the Authority acquire real property or make improvements thereon prior to validation of any agreement, lease and issuance of obligations as provided in subsection O of this section. If title to real property identified in the successful proposal is held by an entity of state government, including, but not limited to, the Oklahoma State Regents for Higher Education or any institution within The Oklahoma State System of Higher Education, the owner of

the real property shall convey the real property to the Authority under such terms as may be mutually agreed to by the owner and the Authority.

D. Notwithstanding any other provision of law to the contrary, if the owner of the real property and the Authority, with the approval of the entity, reach an agreement for the transfer of the property, the owner of such property shall be authorized to make the conveyance of the real property to the Authority according to the terms of the agreement for the sale of the real property. The owner of the real property shall not be required to obtain the consent of any other entity, agency, board, commission or department of state government for the real property transfer and the owner of the real property is specifically authorized to make conveyance of the real property pursuant to the terms of this act. The owner shall be exempt from any provisions that would otherwise restrict the conveyance of the property to the Authority.

E. Notwithstanding any other provision of law to the contrary, the Authority shall not be subject to the provisions of any law that would otherwise require the Authority to acquire the real property using a competitive bidding process or that would require the solicitation of requests for proposals.

F. The Authority shall be authorized to use available funding or such other sources as may be designated by law in order to acquire the real property and make improvements thereon. The acquisition of the real property and the construction of improvements thereon by the Authority shall be deemed to be in furtherance of the essential government purpose of promoting the development of biomedical research. The Legislature finds that the acquisition of the real property, the construction of improvements thereon and any lease between the Authority and the qualified medical research entity hold the potential for high value-added economic activity and resulting economic benefits including, but not

limited to, formation of business entities with substantial assets and capital investment within the State of Oklahoma, employment of persons at compensation levels exceeding per capita income or median income measurements in the State of Oklahoma, promotion of the medical and healing arts, the benefits derived by the citizens of the State of Oklahoma resulting from research conducted at the facility and related business activity. Any use of public funds by the Authority for the acquisition of the real property and the construction of improvements thereon shall be deemed to be in furtherance of a public purpose.

G. The authorized uses of the real property pursuant to the terms of the lease and economic development agreement shall include, but shall not be limited to, office and laboratory space for use by qualified medical research personnel engaged in basic biomedical research, applied biomedical research and other forms of targeted medical research activity. The economic development agreement and lease may contain such other terms as the Authority and the qualified medical research entity may mutually agree.

H. During the term of any lease executed between the Authority and the qualified medical research entity, and after the Authority has acquired title to the real property and made improvements thereon, the qualified medical research entity may make such improvements to the real property as may be required for the purpose of developing a nationally competitive medical research facility.

I. In accordance with the provisions of this act and subject to the terms of the economic development agreement and lease between the Authority and the qualified medical research entity, the Authority shall transfer title to the real property described by the lease, together with improvements located thereon, to the lessee at the end of the lease term or at such earlier time as the lease agreement may provide. The terms of the economic development agreement and the lease shall provide that the qualified medical

research entity will receive credit toward the purchase price of the real property at the end of the lease term based upon the economic benefits resulting from biomedical and other research conducted by or at the request of the qualified medical research entity during the term of lease.

J. The Authority shall be and is hereby expressly authorized and directed to convey the real property acquired for the benefit and use of the qualified medical research entity to such entity at the end of the lease term or such earlier time as the lease agreement may provide. The ability for the Authority to make such conveyance shall not be applicable to any other real property owned by the Authority. Notwithstanding any other provision of law to the contrary, the Authority shall convey the real property, together with improvements, to the lessee as provided by the terms of the lease agreement and the Authority shall not be subject to any provision of law that would otherwise restrict, impair, impede or delay such conveyance.

K. During the term of the economic development agreement and lease, the Authority may undertake to analyze the extent to which the lessee performs covenants related to research or related economic activity during the lease term in accordance with the provisions of the agreements or the provisions of the lease, but neither the Authority nor its employees shall be liable for any act or omission related to its analysis of such economic performance indicators.

L. The Authority, pursuant to the provisions of Section 3208 of Title 63 of the Oklahoma Statutes, shall issue its obligations in an amount necessary to provide net proceeds equal to Ten Million Dollars (\$10,000,000.00) for the benefit of a qualified medical research entity with which the Authority has entered into a lease as provided by this section. The proceeds from the issuance of obligations authorized by this subsection shall be made available to

or for the benefit of the qualified medical research entity for purposes of constructing such improvements as the qualified medical research entity may deem necessary in order to construct, operate and maintain a nationally competitive medical research facility. The provisions of this subsection shall be subject to the maximum amount of outstanding bonds which may be issued by the University Hospitals Authority pursuant to paragraph 12 of subsection B of Section 3208 of Title 63 of the Oklahoma Statutes and the authority for issuance of obligations pursuant to this subsection shall not be considered or deemed to increase the maximum amount of outstanding obligations of the University Hospitals Authority.

M. The Legislature finds that the use of available funds by the Authority, including proceeds from the issuance of any obligations pursuant to subsection L of this section, for purposes of acquiring and improving real property for the benefit of a qualified medical research entity as provided by subsection B of this section, constitutes a lawful public purpose and is in furtherance of the state's legitimate interests in improving the economy of the State of Oklahoma, the advancement of science and medical technology, the attraction of venture capital for purposes of investment in Oklahoma business enterprises that may be created as a result of research conducted at the facility, job creation, and other public purposes and that the development of a nationally competitive medical research facility provides benefits for the State of Oklahoma, its political subdivisions and its residents that can only be achieved through the means provided in this act.

N. The Legislature finds that the value conferred by the qualified medical research entity during the term of the lease and economic development agreement, including job creation, the concentration of medical research expertise, the basic biomedical research, applied biomedical research and other research, potential for advancements in health care, pharmaceutical development and

other medical technologies, is at least equal to the fair market value of the real property occupied by the qualified medical research entity during the term of the lease and transferred to the lessee at the end of the lease term or at such earlier time as the lease may provide.

O. The Authority shall cause the agreement and lease between the Authority and the qualified medical research entity and any proposed issuance of obligations by the Authority for the benefit of the qualified medical research entity pursuant to subsection L of this section to be the subject of an original proceeding before the Oklahoma Supreme Court for validation of the agreement and lease and for validation of the issuance of such obligations in the same manner as provided by Section 3217 of Title 63 of the Oklahoma Statutes. Original jurisdiction is hereby conferred upon the Oklahoma Supreme Court for such purpose. Subject to other provisions of law governing the priority of proceedings before the Court, the Court shall give precedence to the application and to consideration of the merits of such application.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 3208, is amended to read as follows:

Section 3208. A. On and after June 1, 1993, and until July 1, 1993, in order to effectuate the transfer of the University Hospitals from the Commission for Human Services and the Department of Human Services to the University Hospitals Authority, the Authority shall have the powers and duties to:

1. Adopt bylaws and promulgate rules for the regulation of its affairs and the conduct of its business;
2. Adopt an official seal;
3. Maintain an office at the University Hospitals;
4. Make and enter into all contracts necessary or incidental to the performance of its duties and the execution of its powers pursuant to the University Hospitals Authority Act;

5. Appoint such officers, agents and employees, including but not limited to attorneys, as it deems necessary to implement the provisions of this subsection to prescribe their duties and to fix their compensation; and

6. Establish petty cash funds and provide for appropriate accounting procedures and controls.

B. On and after July 1, 1993, the Authority shall have the power and duty to:

1. Adopt bylaws and promulgate rules for the regulation of its affairs and the conduct of its business;

2. Adopt an official seal;

3. Maintain an office at the University Hospitals;

4. Sue and be sued, subject to the provisions of The Governmental Tort Claims Act;

5. Establish rates of payment for hospital and clinical services, which shall provide for exceptions and adjustments in cases where the recipients of services are unable to pay and for whom no third party source of payment is available, and to establish different rates of payment for indigent and nonindigent care;

6. Enter into cooperative agreements with the Board of Regents of the University of Oklahoma for educational programs, professional staffing, research and other medical activities;

7. Make and enter into all contracts necessary or incidental to the performance of its duties and the execution of its powers pursuant to the University Hospitals Authority Act;

8. Purchase or lease equipment, furniture, materials and supplies, and incur such other expenses as may be necessary to maintain and operate the hospitals or clinics, or to discharge its duties and responsibilities or to make any of its powers effective;

9. Acquire by purchase, lease, gift, or by any other manner, and to maintain, use and operate or to contract for the maintenance, use and operation of or lease of any and all property of any kind,

real, personal, or mixed or any interest therein unless otherwise provided by the University Hospitals Authority Act;

10. Appoint such officers, agents and employees, including but not limited to attorneys, as it deems necessary to operate and maintain the University Hospitals and to prescribe their duties and to fix their compensation. The Authority shall employ and fix the duties and compensation of an administrator of the hospitals-;

11. Accept grants from the United States of America, or from any corporation or agency created or designed by the United States of America, and, in connection with any such grant, to enter into such agreements as the United States of America or such corporation or agency may require;

12. Make and issue bonds and to pledge revenues of the Authority subject to the Oklahoma Bond Oversight and Reform Act. ~~Nothing~~ Except as specifically authorized by subsection L of Section 1 of this act, nothing in the University Hospitals Authority Act shall authorize the issuance of any bonds of the Authority payable other than from revenues of the University Hospitals. Funds appropriated to the University Hospitals shall not be used for issuance of bonds. Authority revenue bonds issued under the provisions of this act or pursuant to subsection L of Section 1 of this act shall not at any time be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any political subdivision, but such bonds shall be payable solely from the funds herein provided or from other sources of revenue, including rental income received by the Authority under the terms of any lease authorized and executed pursuant to Section 1 of this act. Such revenue bonds shall contain on the face thereof a statement to the effect that neither the state nor the Authority shall be obligated to pay the same or the interest thereon except from the revenues of the project or projects for which they are issued and that neither the faith and credit nor the

taxing power of the state or any political subdivision thereof is pledged, or may hereafter be pledged, to the payment of the principal of or the interest on such bonds. The maximum amount of outstanding bonds, including the amount of bonds outstanding as authorized pursuant to subsection L of Section 1 of this act, at any time shall not exceed Fifty Million Dollars (\$50,000,000.00) unless a greater amount is expressly approved by the Legislature by a concurrent resolution adopted prior to commencing any action in anticipation of issuance of revenue bonds of the University Hospitals Authority for the greater amount;

13. Provide for complete financial audits on all accounts of the University Hospitals Authority and to authorize periodic audits by an independent external auditing agency. Such audits to be performed annually in a format approved by the State Auditor and Inspector and all such audits shall be submitted to the State Auditor and Inspector for review. Such audits shall be made in accordance with generally accepted auditing standards and government auditing standards. Financial statements shall be prepared in accordance with generally accepted accounting principals. In addition to said audits, the State Auditor and Inspector, whenever he deems it appropriate, and at least once each five (5) years, or upon receipt of a request to do so from the Governor, the Attorney General, the President Pro Tempore of the Senate, the Speaker of the House of Representatives or the Authority shall conduct a special audit of the Authority and the University Hospitals;

14. Engage in long-term planning for the operation and management of the University Hospitals;

15. Establish petty cash funds and provide for appropriate accounting procedures and controls;

16. Contract with national manufacturers and distributors of drugs and medical supplies when appropriate to carry out the purposes of this act;

17. Do all other things necessary and proper to implement the provisions of the University Hospitals Authority Act;

18. Waive, by such means as the Authority deems appropriate, the exemption from federal income taxation of interest on the Authority's bonds provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption; and

19. Arrange for guaranties or insurance of its bonds by the federal government or by any private insurer, and to pay any premiums therefor.

C. The University Hospitals Authority and the University Hospitals shall be subject to the Oklahoma Budget Law of 1947, Section 41.1 et seq. of Title 62 of the Oklahoma Statutes.

D. The Authority shall prepare monthly a "budget vs. actual" report which shows by budget activity the monthly and year-to-date revenues and expenditures compared to budgeted revenues and expenditures. Such report shall be submitted to the Office of State Finance and to the Directors of the House of Representatives Fiscal Division and the Senate Fiscal Division.

E. The Authority shall be subject to the professional risk management program provided for in Section 85.34 of Title 74 of the Oklahoma Statutes.

F. The Department of Human Services Institutional Maintenance and Construction Unit and the Architecture and Engineering Planning Unit should be given first priority to be vendor for the University Hospitals Authority for construction and remodeling projects which fall within their scope of services. The Authority may enter into contracts for construction and remodeling projects with another contractor only after compliance with all other applicable statutes and after making a specific finding that another contractor is more competitive.

G. The Authority shall continue to provide space, utilities and janitorial services to the Department of Human Services Institutional Maintenance and Construction Architecture and Engineering Planning Unit.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 3215, is amended to read as follows:

Section 3215. A. Subject to the provisions of paragraph 12 of subsection B of Section ~~§~~ 3208 of this ~~act~~ title, the University Hospitals Authority may provide by resolution, from time to time, for the issuance of revenue bonds for its lawful purposes, in such amount or amounts as are necessary, incidental or convenient to the exercise of powers, rights, privileges and functions conferred upon it by the University Hospitals Authority Act or other law. The principal of and interest on any indebtedness shall be payable solely from the revenues of the Authority and such other funds as may be provided by law for such payment, including rental income received by the Authority under the terms of any lease authorized and executed pursuant to Section 1 of this act. The Authority may provide for credit enhancement as additional security or liquidity for its bonds and enter into such agreements as may be necessary or appropriate to provide for the repayment of any funds advanced by the provider of any such credit enhancement including the payment of any fees and expenses incurred in connection therewith. The bonds of each issue shall bear interest at fixed or variable rates and shall bear an average interest rate not to exceed eleven percent (11%) per annum, shall mature at such time or times not exceeding thirty (30) years from their date or dates of issue, as may be determined by the Authority, and may be made redeemable before maturity at the option of the Authority, at such time or times and at such price or prices and pursuant to such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds and the manner

of execution thereof, and shall fix the denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank and trust company within or without this state. If any officer whose signature or facsimile of whose signature appears on any bonds shall cease to be said officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes, the same as if the person had remained in office until such delivery. All bonds issued pursuant to the provisions of the University Hospitals Authority Act or pursuant to subsection L of Section 1 of this act shall have all the qualities and incidences of negotiable instruments subject to the laws of this state. The Authority may sell the bonds in such amounts and in such manner, either at public or private sale, and for such price, as it may determine to be in the best interests of the state. If the bonds are not sold by competitive bid, the sale must be approved by the State Bond Advisor.

B. All fees and expenses of bond sales must be approved by the State Bond Advisor and the Bond Oversight Commission. Prior to the preparation of definitive bonds, the Authority, subject to like restrictions, may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds which have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which have become mutilated or which have been destroyed or lost. Except as otherwise provided by Section ~~19~~ 3219 of this ~~act~~ title and subsection L of Section 1 of this act, bonds may be issued pursuant to the provisions of the University Hospitals Authority Act without obtaining the consent of any department, division, commission, board, bureau, or agency of this state, and without any other proceedings or the occurrence of any other conditions or things than those proceedings, conditions,

or things that are specifically required by the University Hospitals Authority.

C. The Authority may, by resolution, provide for the issuance of refunding bonds then outstanding, including the payment of any redemption premium, any interest accrued to the date of redemption of such bonds, and for incurring additional indebtedness for its lawful purposes. The issuance of such bonds shall be governed by the provisions of the University Hospitals Authority Act.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 3217, is amended to read as follows:

Section 3217. The University Hospitals Authority or the University Hospitals Trust may file an application with the Supreme Court of the State of Oklahoma for approval of any bonds to be issued under the provisions of the University Hospitals Authority Act or pursuant to subsection L of Section 1 of this act, and exclusive original jurisdiction is hereby conferred upon the Supreme Court to hear and determine such application. The Supreme Court shall give such applications precedence over the other business of the Court and consider and determine the validity of the bonds and consider the application and any protest which may be filed thereto. Notice of the hearing on each application shall be given by notice published in a newspaper of general circulation in this state that on a day named the Authority or the Trust will ask the Court to hear the application and approve the bonds. Such notice shall inform all interested parties that they may file a protest against the issuance of the bonds, may be present at the hearing, and may contest the legality thereof. Such notice shall be published one time, not less than ten (10) days prior to the date named for the hearing and the hearing may be adjourned from time to time in the discretion of the Court. If the Court is satisfied that the bonds have been properly authorized in accordance with the University Hospitals Authority Act, and that when issued such bonds will constitute valid

obligations in accordance with their terms, the Court shall render its written opinion approving the bonds and shall fix the time within which the petition for rehearing may be filed. The decision of the Court shall be a judicial determination of the validity of the bonds, shall be conclusive as to the Authority or the Trust, its officers and agents, and thereafter the bonds so approved and the revenues pledged to their payment shall be incontestable in any court in the State of Oklahoma.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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