

January 15, 2014

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Adoption of Revised Policy R587, Contract or Lease Purchase Financing

Issue

The attached Policy R587, *Contract or Lease Purchase Financing* is a **replacement** for the existing R587, *Lease-Purchase Financing* policy and is presented for your consideration and adoption.

Background

The existing policy originally was written to enable institutions to participate in an opportunity to acquire **equipment** with long-term financing provided through a statewide Certificate of Participation program. That initiative has long since disappeared, and the existing policy was recently amended to reflect that fact.

Though the existing policy was never structured to do so, over the years, it has, on occasion, been cited as the governing authority in approving lease-purchase financing for **facilities**. The Regents are authorized by statute (UCA §53-21-108) to use this method of financing, instead of revenue bonds, to acquire facilities in some circumstances. The new policy provides procedures and guidance to be used by the Regents and USHE institutions in instances where this financing method is determined to be appropriate.

Because this type of long-term financing is closely akin to revenue bond financing, much of the procedural information included in this policy reflects related requirements and procedures found in R590, Issuance of Revenue Bonds for Facilities Construction or Equipment.

Approval of the contracts to finance "energy savings agreement" projects under the State Building Energy Efficiency program has also been included in this policy. These projects are developed by institutions working with the DFCM Energy Manager and are ultimately approved by the Office of the Governor. This approval, however, does not include approval of a financial agreement with a third party (ESCO or other financing entity).

Finally, a copy of the existing policy, which this new policy will replace, is attached. It deals only with lease-purchase financing for equipment, and while the statute that authorizes the Regents to use lease/purchase financing makes mention of equipment, it does so only in the context of "including necessary equipment, furnishings, and land" that are part of a facilities project. The proposed policy covers this with a one

sentence statement included at the end of the new policy; one that affirms that equipment purchases are under the purview of institutional policies and procedures approved by institutional Boards of Trustees.

Commissioner's Recommendation

The Commissioner recommends that the Regents adopt this replacement policy.

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David L. Buhler  
Commissioner of Higher Education

DLB/GLS/WRH/CRW  
Attachment

R587-1. Purpose: To provide policy and procedural guidelines for the issuance of contract and lease-purchase financing within USHE for facilities construction/acquisition or major equipment purchases.

## R587-2. References

- 2.1. Utah Code §53B-1-103 Establishment of State Board of Regents – Powers and authority
- 2.2. Utah Code §53B-20-103 Powers of the state board – Capital Facilities projects - Exceptions
- 2.3. Utah Code §53B-21-108 Financing project by contract or lease agreement instead of by bond issue.
- 2.4. Utah Code §63A-5-701 State Building Energy Efficiency Program
- 2.5. Utah Code §63B-1-301 to 321 State Building Ownership Act (SBOA)
- 2.5. Policy and Procedures R590, Issuance of Revenue Bonds for Facilities Construction or Equipment
- 2.6. Policy and Procedures R710, Capital Facilities
- 2.7. Policies and Procedures R712, Nontraditional Arrangements for Development of Facilities on Campuses

## R587-3. Definitions

- 3.1. Lease-purchase Financing – A financing method for acquisition of capital facilities assets, major equipment items (tangible assets), and computer software (intangible assets) that amortizes the cost of the asset over a specified time period, at the conclusion of which the asset vests in the lessee.
- 3.2. Capital or Finance Lease – A lease agreement in which the lessor agrees to transfer ownership rights of the asset to the lessee after the completion of the lease period
- 3.3. Operating Lease – A contract that allows for the use of an asset, but does not convey rights of ownership unless a purchase option is available and exercised.
- 3.4. Direct Financing – The private placement of financing with a leasing company or bank to finance the cost of the asset and lease it to the institution.
- 3.5. Certificates of Participation - Arrangement of financing through the public sale of certificates of participation (COPs) where the certificate holders own a pro rata share in a specific pledged revenue stream (usually lease payments by the issuer) and essentially become the lessors.

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<sup>1</sup> Approved May 15, 1984, amended May 17, 2013.



3.6. Leasehold Revenue Bonds – Financing of capital assets through the sale of bonds secured by lease payments (“lease revenue bonds”). This method requires that the property and/or equipment be purchased by a not-for-profit corporation or governmental agency. The not-for-profit corporation or governmental agency issues bonds secured by the lease and serves as lessor of the property. This form of financing is used by the State Building Ownership Authority (SBOA) – see Utah Code §63B-1-301 to 321.

3.7. Energy Service Agreement – A contractual agreement entered into whereby the institution implements energy efficiency measures using the stream of savings in utility costs resulting from implementation of the energy efficiency measures as the funding source for repayment.

#### R587-4. Policy – Acquisition of Facilities

4.1. Pursuant to Utah Code §53B-21-108 the Board may authorize institutions to acquire facilities using contracts and lease-purchase agreements instead of by revenue bond issue whenever it determines it to be advisable, subject to the following conditions:

4.1.1. Feasibility Study - Careful analysis of the feasibility of alternative financing methods (e.g., lease-purchase vs. revenue bonding) should be made of projected revenues, expenses, and other relevant factors to establish that the lease purchase option is the preferred method for financing a facilities project.

4.1.2. Term of the Lease – A contract or lease-purchase agreement may not to exceed 40 years.

4.1.3. Approval of Plans, Specifications, and Cost Estimates – For facilities to be constructed by a third party for ownership by the institution by means of contract or lease-purchase agreement, plans and specifications detailing the scope of and cost estimates for the project must be submitted to the Board of Regents for approval prior to execution of the agreement.

4.1.4. Quality Control – Adequate provisions are to be included in the contractual agreement to ensure that the design and construction of the facilities conform to standards stipulated by the institution and that there is compliance with applicable state or local construction codes.

4.1.5. Sources of Funding – Except for energy efficiency agreements for projects qualifying under the State Building Energy Efficiency Program (Utah Code §63A-5-701) funding for contract or lease payments to amortize the project cost are to come from institutional revenues not a part of the institutions appropriated budget.

4.1.6. Ultimate Ownership of the Facility – The agreement shall specify that when all lease installments have been paid in full as to both principal and interest the ownership of the facility shall vest in the institution.

4.2. Availability of the Office of the Commissioner of Higher Education for Assistance: When requested by the institution, the Office of the Commissioner of Higher Education shall assist in the development of institutional contract and lease-purchase financing proposals for construction or acquisition of facilities. At the discretion of institution officials, institutions may proceed independently to develop contract and lease-purchase financing proposals for facilities construction or acquisition provided the proposals are developed in accordance with Regent policies R220, R710 and applicable procedures contained in this policy.



4.3. Procedural Requirements for Institutions Entering into Contract and Lease-purchase Agreements: Approval for acquisition of facilities through contract and lease-purchase agreements, including energy service agreements, are subject to the following procedural requirements:

4.3.1. Obtain Board approval in concept for each facility construction project through the Finance and Facilities Committee of the Board based on documentation of the need for the project and its compatibility with and inclusion in the current institutional facilities master plan. This approval must be sought and obtained prior to or simultaneously with approval to seek financing.

4.3.2. Obtain Board approval to seek contract or lease-purchase financing for the construction project or facility acquisition through the Finance and Facilities Committee of the Board, providing a description of the project and an initial plan for payment. When scheduling permits, approval to seek financing shall be obtained prior to the steps set forth in 4.3.3. When scheduling requirements are urgent, steps set forth in 4.3.3 may be initiated prior to obtaining Board approval to seek financing.

4.3.3. Obtain outside professional advice (e.g., appointment of legal counsel by the Attorney General, selection of a financial advisor, etc.) as needed.

4.3.4. Obtain Board authorization through the Finance and Facilities Committee for issuance of the contract or lease-purchase agreement. The final agreement shall be reviewed by the Office of the Attorney General to ascertain that the specific proposal complies with current applicable law. The institution shall submit to the Board current plans for payment and up-to-date financial feasibility analysis with the proposed authorizing resolution. When possible, the contract or lease-purchase agreement, related documentation, and financial feasibility data shall be submitted to the Office of the Commissioner of Higher Education for review at least 15 days prior to Board consideration for approval.

4.4. Procurement of Financial Services: Institutional procurement of all financial services relating to financing issues shall be made in compliance with Utah Code §63G-6, Utah Procurement Code.

4.5. Responsibility of the Office of the Commissioner of Higher Education to Review Documentation: Prior to Board consideration of any lease-purchase agreement the Office of the Commissioner of Higher Education shall review the applicable contract or lease-purchase documentation and evaluate up-to-date financial data relating to the financial feasibility of the proposed financial agreement in order to be available to address any financial concerns the Board may have.

4.6. Submission of an Annual Report of Long-term Contract and Lease-purchase Debt. The Office of the Commissioner of Higher Education shall include information about each applicable contract and lease purchase agreement in the annual bonded indebtedness report submitted to the Board which summarizes institutional and system long-term indebtedness (see R590-3.7)

R587.5 Policy – Capital and Operating Lease Financing of Major Equipment Items: Acquisition of major equipment items (tangible assets) and computer software (intangible assets) using capitalized and operating leases must conform to established institutional policies and procedures approved by institutional Boards of Trustees and must be accounted for in compliance with generally accepted accounting principles.

## EXISTING POLICY

~~**R587-1. Purpose:** To authorize the Commissioner to approve specific acquisitions of equipment on a lease-purchase basis.~~

### ~~**R587-2. References**~~

~~2.1. Utah Code §53B-1-103~~

### ~~**R587-3. Policy**~~

~~**3.1. Commissioner's approval:** Lease-purchase acquisitions requiring the Commissioner's approval are limited to those which are substantial in nature.~~

~~**3.2. Authorized debt service costs paid from appropriated funds:** To the extent that debt service costs for lease-purchase acquisitions are to be paid by an institution from appropriated funds, the cumulative commitment of annual payments during any fiscal year from such funds, for these and any previous equipment purchases, shall not exceed 50 percent of the budgeted funds for equipment in the relevant line items, respectively, for that institution during that fiscal year.~~

~~**3.4. Debt service costs paid from non-appropriated funds:** To the extent that debt service costs for such acquisitions are to be paid by an institution from non-appropriated funds, the cumulative commitment of such funds for these and any previous equipment purchases to be paid from the same source will be shown, by an economic feasibility study, to be prudent and reasonable in relation to budgeted equipment funds from that source.~~

~~**3.5. Future acquisitions:** Future equipment acquisitions by an institution on a lease-purchase or other similar basis involving debt service payments covering more than one year may not exceed the limitations stated in paragraphs 3.3 and 3.4 unless previously authorized by the Board of Regents or the Legislature.~~