

November 5, 2014

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Revision of Policy R712, Nontraditional Arrangements for Development of Facilities on Campuses

Issue

Regent policy R712, *Nontraditional Arrangements for Development of Facilities on Campuses*, has recently been reviewed by the Office of the Commissioner and USHE institutional representatives; this review is a part of the continuing review of all Regental policies. A result of this review is the recommendation to update the references to other policies and more appropriately position sections of the existing policy.

Background

The key provisions addressed in R712's rewrite include:

- 1) Sections 2.6., 2.7. 4, 5 - more directly tying the policy to other applicable Regent policies including R491, *University Research Parks*, and R587, *Contract and Lease-Purchase Financing*
- 2) Sections 4 and 5 - moved "Quality Control," "Construction Codes," and "Life-Cycle Costing" to the more appropriate location of section 5.5., updated the "Life-Cycle Costing" definition
- 3) Section 4.4. - moved to R587

Commissioner's Recommendation

The Commissioner recommends that the Regents review the proposed revisions and if in agreement with the changes, approve the revisions to policy R712, *Nontraditional Arrangements for Development of Facilities on Campuses*, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/WRH/CRW
Attachment

R712, Nontraditional Arrangements for Development of Facilities on Campuses¹

R712-1. Purpose: To provide for consideration of nontraditional arrangements for development of facilities on campuses of institutions in the Utah System of Higher Education.

R712-2. References

- 2.1. Utah Code [§53B-6-101](#) (Master Planning for Higher Education)
- 2.2. Utah Code [§53B-20-103](#) (Powers of State Board - Capital Facilities Projects)
- 2.3. Utah Code [§53B-21-108](#) (Financing Projects by Contract or Lease Agreement)
- 2.4. Utah Code [Title 63A, Chapter 5](#) (State Building Board - Division of Facilities Construction and Management)
- 2.5. Policy and Procedures [R710](#), Capital Facilities
- 2.6. [Policy and Procedures R491, University Research Parks](#)
- 2.7. [Policy and Procedures R587, Contract and Lease-purchase Financing](#)

R712-3. General Policy on Nontraditional Arrangements for Development of Facilities on Campuses of Institutions of Higher Education

- 3.1. **General Policy:** It is the general policy and expectation of the Board of Regents that nontraditional arrangements for development of facilities on campuses of institutions in the Utah System of Higher Education will be used sparingly and only where specific and unusual circumstances clearly so warrant.

R712-4. Policy on Lease-Purchase Acquisitions of Facilities for Institutional Use: Pursuant to authority contained in Utah Code [§53B-21-108](#) the Board of Regents will consider institutional proposals for lease-purchase acquisition of facilities to be financed totally from institutional revenues not a part of the appropriated budget. Such a proposal will be finalized only after receipt of advice from the Attorney General's Office that the specific proposal is within the Regents' authority to approve under current statute, ~~and final approval will be granted only where the following conditions are met:~~ [Approval of such proposals is subject to the provisions of Policy and Procedures R587, Contract and Lease-purchase Financing.](#)

- ~~4.1. **Quality Control:** Adequate provisions for quality control in the design and construction of the project;~~
- ~~4.2. **Construction Codes:** Provision to ensure compliance with appropriate state or local construction codes;~~
- ~~4.3. **Life Cycle Costing:** Design provision for life cycle costing criteria;~~

¹ Approved December 20, 1985.

~~4.4.— **Analysis of Revenues and Expenses:** Verification by analysis of revenues and expenses, taking all costs of both methods into consideration, that the lease purchase arrangement can be expected to provide an equivalent facility at less total cost to the institution than by use of a revenue bond issue with project construction managed by DFCM;~~

~~4.5.— **Contractual Provisions:** Verification that proposed arrangements set forth in the necessary contractual documents:~~

~~4.5.1.— Are financially feasible for the institution;~~

~~4.5.2.— Adequately protect the interests of the institution regarding:~~

~~4.5.2.1.— termination, extension, or renewal of the lease,~~

~~4.5.2.2.— resolution of other eventualities that reasonably can be foreseen, and~~

~~4.5.2.3.— ultimate ownership of the facility;~~

~~4.6.— **Attorney General Approval:** Attorney General's Office approves all contract documents as to form and legal authority.~~

R712-5. Policy on Facilities Developed and Owned by an Outside Party on Leased Institutional Land: The Board of Regents recognizes that in specific instances, institutional and/or public interests may be well served by arrangements for construction and operation of facilities by outside organizations or parties on leased institutional property. The Regents will, therefore, from time to time consider proposals for such arrangements on institutional property other than property in designated research parks for which, under State statute and Policy and Procedures R491, University Research Parks, research universities have delegated responsibility. Such a proposal will be finalized only after receipt of advice from the Attorney General's Office that the specific proposal is within the Regents' authority to approve under current statute, and final approval will be granted only where the following conditions are met:

5.1. Program Benefits or Broad Public Purpose: The proposed arrangement provides significant benefits to the program, students, faculty, or staff of the institution, or serves a broad public interest that could not be served as well any other way;

5.2. Proper Developer and Use: The proposed outside developer/owner and the proposed use of the facility are proper and appropriate for the image and environment of the institution;

5.3. Adequate Compensation: Compensation to the institution, either in cash or in kind (or a combination thereof), is adequate to justify any financial considerations provided by the institution to the outside developer/user of the facility;

5.4. Contractual Provisions: ~~Proposed a~~ Arrangements set forth in contract documents shall demonstrate that the provisions:

5.4.1. Are financially feasible for the institution;

5.4.2. Adequately protect the interests of the institution regarding:

5.4.2.1. initial relationships with the outside organization or party,

5.4.2.2. ~~R~~esolution of eventualities that can reasonably be foreseen,

5.4.2.3. ~~I~~nstitutional right to control appearance of the facility, external remodeling/additions, level of building and landscape maintenance, parking rights, exterior graphics, access to institutional utility systems and access roads, ~~and~~

5.4.2.4. ~~T~~ermination, extension, or renewal of the land-lease, and ultimate ownership of the facility;

5.5. Construction Requirements: Contractual considerations shall ensure that the following conditions are met:

5.5.1. Quality Control: Adequate provisions for quality control in the design and construction of the project

5.5.2. Construction Codes: Provision to ensure compliance with appropriate state or local construction codes;

5.5.3. Life-Cycle Costing: Assurance that provisions dealing with the costs of design, construction, operation and maintenance, and disposing of the building have been met.

5.56. Attorney General Approval: Attorney General's Office approves all contract documents as to form and legal authority.

R712, Nontraditional Arrangements for Development of Facilities on Campuses¹

R712-1. Purpose: To provide for consideration of nontraditional arrangements for development of facilities on campuses of institutions in the Utah System of Higher Education.

R712-2. References

- 2.1. Utah Code [§53B-6-101](#) (Master Planning for Higher Education)
- 2.2. Utah Code [§53B-20-103](#) (Powers of State Board - Capital Facilities Projects)
- 2.3. Utah Code [§53B-21-108](#) (Financing Projects by Contract or Lease Agreement)
- 2.4. Utah Code [Title 63A, Chapter 5](#) (State Building Board - Division of Facilities Construction and Management)
- 2.5. Policy and Procedures [R710](#), Capital Facilities
- 2.6. Policy and Procedures [R491](#), University Research Parks
- 2.7. Policy and Procedures [R587](#), Contract and Lease-purchase Financing

R712-3. General Policy on Nontraditional Arrangements for Development of Facilities on Campuses of Institutions of Higher Education

- 3.1. **General Policy:** It is the general policy and expectation of the Board of Regents that nontraditional arrangements for development of facilities on campuses of institutions in the Utah System of Higher Education will be used sparingly and only where specific and unusual circumstances clearly so warrant.

R712-4. Policy on Lease-Purchase Acquisitions of Facilities for Institutional Use: Pursuant to authority contained in Utah Code [§53B-21-108](#) the Board of Regents will consider institutional proposals for lease-purchase acquisition of facilities to be financed totally from institutional revenues not a part of the appropriated budget. Such a proposal will be finalized only after receipt of advice from the Attorney General's Office that the specific proposal is within the Regents' authority to approve under current statute. Approval of such proposals is subject to the provisions of Policy and Procedures [R587](#), Contract and Lease-purchase Financing.

R712-5. Policy on Facilities Developed and Owned by an Outside Party on Leased Institutional Land: The Board of Regents recognizes that in specific instances, institutional and/or public interests may be well served by arrangements for construction and operation of facilities by outside organizations or parties on leased institutional property. The Regents will, therefore, from time to time consider proposals for such arrangements on institutional property other than property in designated research parks for which, under State statute and Policy and Procedures [R491](#), University Research Parks, research universities have delegated responsibility. Such a proposal will be finalized only after receipt of advice from the Attorney General's Office that the specific proposal is within the Regents' authority to approve under current statute, and final approval will be granted only where the following conditions are met:

¹ Approved December 20, 1985.

- 5.1. **Program Benefits or Broad Public Purpose:** The proposed arrangement provides significant benefits to the program, students, faculty, or staff of the institution, or serves a broad public interest that could not be served as well any other way;
- 5.2. **Proper Developer and Use:** The proposed outside developer/owner and the proposed use of the facility are proper and appropriate for the image and environment of the institution;
- 5.3. **Adequate Compensation:** Compensation to the institution, either in cash or in kind (or a combination thereof), is adequate to justify any financial considerations provided by the institution to the outside developer/user of the facility;
- 5.4. **Contractual Provisions:** Arrangements set forth in contract documents shall demonstrate that the provisions:
- 5.4.1. Are financially feasible for the institution;
 - 5.4.2. Adequately protect the interests of the institution regarding:
 - 5.4.2.1. Initial relationships with the outside organization or party,
 - 5.4.2.2. Resolution of eventualities that can reasonably be foreseen,
 - 5.4.2.3. Institutional right to control appearance of the facility, external remodeling/additions, level of building and landscape maintenance, parking rights, exterior graphics, access to institutional utility systems and access roads,
 - 5.4.2.4. Termination, extension, or renewal of the land-lease, and ultimate ownership of the facility;
- 5.5. **Construction Requirements:** Contractual considerations shall ensure that the following conditions are met:
- 5.5.1. **Quality Control:** Adequate provisions for quality control in the design and construction of the project
 - 5.5.2. **Construction Codes:** Provision to ensure compliance with appropriate state or local construction codes;
 - 5.5.3. **Life-Cycle Costing:** Assurance that provisions dealing with the costs of design, construction, operation and maintenance, and disposing of the building have been met.
- 5.6. **Attorney General Approval:** Attorney General's Office approves all contract documents as to form and legal authority.