

**53B-21-108 Financing project by contract or lease agreement instead of by bond issue -- Authority of board -- Term of lease -- Terms of agreement -- Board covenants.**

- (1) Whenever the board, by resolution, finds and declares it preferable to acquire a project under this chapter by purchase or lease of the facilities constituting the project under an agreement which provides the consideration for the purchase or lease to be paid in installments during a period not exceeding 40 years, rather than through the issuance of revenue bonds by the board in the manner provided in this chapter, it may do so upon compliance with this section.
- (2) The board may lease any portion of the campus of the institution necessary as a site for a project which the board is authorized to acquire under Section 53B-20-103, to any person, for a term not exceeding 40 years.
- (3) The agreement authorized to be entered into by the board shall provide that the person shall construct, improve, remodel, add to, or extend a project of the type and construction described in the agreement on the part of the campus to be leased to the person, or on such real property as may be acquired for that purpose by the person.
- (4) The agreement shall further provide for the leasing of the project, including necessary equipment, furnishings, and land, from the person to the board executing the agreement, for a period not exceeding 40 years.
- (5) Prior to the execution of the agreement, the person proposing to lease the project, including the necessary equipment, furnishings, and land, to the board shall submit to the board all plans, specifications, and estimates for the project.
- (6) The plans, specifications, and estimates shall be approved by resolution of the board prior to the execution of the agreement.
- (7) The board may, by appropriate provisions in the agreement:
  - (a) covenant as to the use which will be made of the project;
  - (b) covenant as to the operation, maintenance, and supervision of the project;
  - (c) covenant to collect fees and charges from all students and other persons availing themselves of the use of the accommodations and facilities of the project;
  - (d) covenant to levy and collect student building fees from all regular and part-time students enrolled in the institution for the use and availability of the project;
  - (e) covenant as to the collection, use, and disposition of the proceeds arising from the collection of all the revenues, fees, and charges;
  - (f) covenant to impose and collect fees and charges in amounts adequate to pay all costs incurred in maintaining and operating the project and to pay the amortization of the acquisition cost of the project, including necessary equipment and furnishings, and interest on the unpaid part of the acquisition cost, whether represented by rental installments or otherwise;
  - (g) covenant to pledge all revenues, fees, and charges, including student building fees, arising from the ownership and operation of the project to the payment of the rental installments provided for under the terms of the contract or lease agreement;
  - (h) covenant as to the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement contained in the agreement;
  - (i) covenant and agree to carry any insurance on the project, and its use and occupancy, as the board considers desirable, and to provide that the cost of the insurance shall be included as a part of the cost of operating the project;
  - (j) covenant to make and enforce such parietal rules and regulations with reference to the use of the facilities comprising the project, or any part of the project, and with reference to requiring any class of students to use the project, or any part of the project, as the board determines desirable for the institution; and

- (k) covenant against the pledging of the revenues, fees, and charges, including student building fees, arising from the ownership and operation of the project for any purpose other than the payment of the rental installments required to be paid under the agreement, or against the issuance of any obligations payable therefrom, unless the pledge or obligations are made subordinate to the agreement. Nothing in this section prevents the board from providing conditions and terms under which pledges may be made and obligations issued on a parity with the pledge of revenues, fees, and charges under the agreement.
- (8) It shall be specifically provided in the agreement that the board is not obligated to pay the rental installments or amortization of the acquisition cost of the project, and interest on the unpaid part of the acquisition cost, from any source other than the revenues, fees, and charges arising from the ownership and operation of the project, including student building fees levied for the use and availability of the facilities of the project.
- (9) Each agreement shall provide that the rental installments, or amortization of the acquisition cost of the project, including necessary equipment, furnishings, and land, and interest on the unpaid part of the acquisition cost, are not an obligation of the state, and that ad valorem taxes or appropriations from the state may not be used to pay or discharge the amounts required to be paid under the agreement.
- (10) The agreement shall also provide that when the amortized acquisition cost, as represented by the rental installments, has been paid in full and when all obligations, if any, issued by the person to finance the cost of the acquisition of the project have been paid in full as to both principal and interest, the agreement terminates and title to the project, including the land upon which the project is situated, and all equipment and furnishings, vests in the board.
- (11) The agreement may provide that the board may purchase the project, including the land upon which the project is situated, and all equipment and furnishings, which is subject to the agreement upon terms wherein rental installments previously made, or a portion of them, are deducted from the cost of acquisition of the project, including the land upon which the project is situated, and all equipment and furnishings, as provided for in the agreement.
- (12) The board may furnish without charge heat, light, water, power, and similar facilities for any project leased by the board for operation by the board under this section, and all projects acquired and constructed under this section are exempt from taxation.
- (13) The agreement may provide that the board may lease the project, including the land upon which the project is situated, and all equipment and furnishings, to any person for a term not exceeding 40 years for operation by any person.
- (14) A lease may not be entered into unless the rental to be paid to the board by the person is sufficient to satisfy the rental to be paid by the board to the person from which the project was originally leased. But in no event may the rental paid to the board be less than the fair rental value of the property leased.

Enacted by Chapter 167, 1987 General Session