

MINUTES

JOINT MEETING
STANDING COMMITTEES -- SENATE WAYS AND MEANS
AND HOUSE APPROPRIATIONS

December 14, 1987
Room 514-S -- Statehouse

Members Present

Senator August "Gus" Bogina, Chairman
Representative Bill Bunten, Vice-Chairman
Senator Mike Johnston
Senator Dave Kerr
Representative Wanda Fuller
Representative Duane Goossen
Representative Harold Guldner
Representative Lee Hamm
Representative Henry Helgerson
Representative Ken King
Representative Don Mainey
Representative David Miller
Representative Jack Shriver
Representative John Solbach
Representative George Teagarden
Representative Bill Wisdom

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Staff Present

Russ Mills, Kansas Legislative Research Department
Ed Ahrens, Kansas Legislative Research Department
Richard Ryan, Kansas Legislative Research Department
Norm Furse, Revisor of Statutes Office
Jim Wilson, Revisor of Statutes Office

Conferees and Others Present

H. Edward Flentje, Secretary, Department of Administration
Art Griggs, Chief Attorney, Department of Administration
Allen Bell, President, Kansas Development Finance Authority
Lorne Phillips, Kansas Department of Health and Environment
Arthur E. Schumann, Kansas Department of Health and Environment
Sherry Brown, Division of Information Systems and Communications

Nick Roach, Division of Purchases
Johnna Thomas, Department of Social and Rehabilitation Services
Cheryl Weker, Department of Social and Rehabilitation Services
Carol Kelpin, Division of Accounts and Reports

Morning Session

Chairman Bogina called the meeting to order at 10:20 a.m. and explained that the purpose of the meeting would be an in-depth discussion of Certificates of Participation and the formulation of policy recommendations from this body concerning the state's use of Certificates of Participation for the acquisition of equipment. Representative Bunten noted that the first two Certificates of Participation issued by the state were to refinance (at a lower interest rate) debt incurred by state agencies through lease purchase agreements. Under current policy, Certificates of Participation must be approved by the State Finance Council.

Staff distributed to the members copies of selected statutes pertaining to today's meeting (Attachment 1).

Dr. H. Edward Flentje, Secretary of Administration, presented his memorandum dated December 11, 1987, and suggested four guidelines for state agency use of equipment purchased through Certificates of Participation (Attachment 2). In his comments, Secretary Flentje emphasized two advantages to the use of certificates: (1) they allow agency heads to spread costs over the life of the equipment; and (2) they enable agencies to make improvements, because capital outlay expenditures suffer when they are in competition with other operating expenditures (OOE). He stated that the three main users of Certificates of Participation are telecommunications, computers, and the Board of Regents.

Art Griggs, Chief Attorney, Department of Administration, reviewed his memorandum dated December 11, 1987 on Installment Purchases, outlining the procedure for installment purchases (Attachment 3). He stated that he uses the terms "lease purchase" and "installment purchase" interchangeably and that the terms denote a buildup of equity, versus rental of equipment in which there would be no equity.

During discussion, several members stated that they have not seen installment purchases mentioned in agency budgets. Concern was expressed that installment purchases can occur and need not be mentioned or that equipment can be budgeted outright and later changed to lease purchase.

Mr. Griggs described a Certificate of Participation as an investor buying a portion of the lease payments on equipment. The interest component that the state pays on an installment purchase through the certificate program is exempt from federal and state income tax. He noted that the certificate program has generated much better data on installment purchases by state agencies.

Representative Bunten stated that the use of long-term debt is not

being disputed, but the question to be resolved by the Committees is how to limit and monitor various state agencies entering into lease purchase agreements.

Mr. Griggs distributed to the Committee a summary by fiscal year of the state's obligation for all current installment purchases (Attachment 4). These figures do not include rental purchases.

Representative Shriver asked if there is the capability to designate a line item in the budget requests from the agencies, "equipment needed next year," and another item, "debt service," so that this information would be accessible when reviewing the budgets.

The meeting was recessed until 1:30 p.m.

Afternoon Session

Allen Bell, President, Kansas Development Finance Authority, appeared before the Committee to explain the procedure for issuing Certificates of Participation and how the certificate program operates. In addition, Mr. Bell distributed an excerpt from Moody's Municipal Credit Report on the State of Kansas (Attachment 5). The Department of Administration distributed a listing of equipment purchased through Certificates of Participation, 1987 Issue (Attachment 6).

Mr. Bell stated that Certificates of Participation are a means of accessing capital markets in order to provide funds to pay for equipment which is leased to governmental agencies. The Kansas Development Finance Authority purchases equipment which is leased to the Department of Administration, who then subleases it to the various state agencies. The investors in certificates are purchasing participation in this lease. In putting together an issue, the Department of Administration requests a listing from each agency of the equipment they wish to finance through the Certificate of Participation program. Next, the size of the issue is determined by the Kansas Development Finance Authority, with the help of a private financial advisor hired by the Department of Administration. The issue is then taken to the State Finance Council for approval. When approval is received, a prospectus is written and the certificates are sold by competitive bid. The money is deposited with the trustee bank and the trustee is instructed by the state to invest the money through the Pooled Money Investment Board. Mr. Griggs noted that agencies do not begin monthly lease payments until the Department of Administration has paid the vendor for the equipment. In 1985, \$29 million was financed through Certificates of Participation. In 1986, the 1985 issue was refinanced and some new equipment was added. The bulk of the 1987 issue of Certificates of Participation is for new equipment, as most of the savings to be realized from refinancing installment contracts were made previously.

In response to a question, Mr. Bell stated that the Kansas Development Finance Authority is involved in the financing of the state office building being purchased by the state through revenue bonds in Wichita. Senator Johnston asked how the state is financially responsible under the certificate program. It was noted that failure to appropriate lease payments does not relieve the agency or state of the contract obligation. Several members noted

that, as long as an agency has received an OOE appropriation, nonpayment of a lease could not be justified.

Representative Mainey asked how the state is now handling service contracts on equipment. Mr. Griggs stated service contracts are generally kept separate from the purchase of equipment and the state is not currently considering setting up a maintenance department to service our own equipment. In regard to service contracts, the agencies determine the best way to go on their equipment.

After a brief recess, Committee discussion focused on oversight by the Legislature, as policymakers, in the acquisition of equipment financed through Certificates of Participation. A member noted that debt obligation from installment purchases has grown to approximately \$72.6 million through FY 1998 with almost no legislative oversight.

Representative Bunten proposed that the Committee's recommendations include the following points: (1) the Committee supports the use of certificates of participation; (2) all long-term purchases should be included in the certificate program; (3) agencies should notify the Department of Administration of equipment they want to purchase through certificates and after the Department approves or disapproves, a list should be presented to the Legislature; and (4) all other installment purchases, leases, or rental equipment would no longer be allowed.

Representative Miller suggested it might be desirable to restrict expenditures from state resources for installment purchases through Certificates of Participation to only funds specifically appropriated for that purpose. This would require a line item in the agency's budget.

Representative Bunten suggested putting the equipment purchases into a bill authorizing the Certificates of Participation, much like the Claims bill, so that consideration by the whole Legislature is assured and the obligation is set out in one place. Representative Hamm stated that a separate bill would restrict the flexibility of the various managers and he believes the desired oversight can occur as the individual budgets are reviewed.

Representative Bunten moved, seconded by Representative Shriver, that the Committee approve the adoption of the four guidelines for state agency use of equipment installment purchase agreements suggested in the Secretary of Administration's memorandum of December 11, 1987, and that these guidelines apply to all state agencies and the Regents' institutions. The motion carried. Representative Shriver commented that, in implementing the guidelines, he would like the Department of Administration to specify the exceptions to the \$15,000 minimum amount per procurement designated in the third guideline.

Representative Bunten moved, seconded by Representative Shriver, that the Committee report state support for the use of Certificates of Participation when they are less expensive than other methods of financing. The motion carried.

Representative Bunten moved, seconded by Representative Teagarden, that if the state is buying a piece of equipment and paying for it over a period of years, Certificates of Participation should be used, if they are the least expensive method of finance. The motion carried.

Representative Bunten moved, seconded by Representative Teagarden, that the Department of Administration should present the items in the Certificates of Participation issue to the Legislature for its review. The motion carried.

Representative Bunten moved, seconded by Representative Teagarden, that lease or rental of equipment be identified in the budgetary process and that lease or rental of equipment be discouraged. The motion carried.

The meeting was adjourned at 4:20 p.m.

Prepared by Russ Mills

Approved by Committee on:

JANUARY 8, 1988
(date)

A memorandum from the Kansas Legislative Research Department dated December 30 regarding Certificates of Participation and the acquisition of equipment by state agencies is included as Attachment 7.

DIVISION OF PURCHASES

75-3738. Powers and duties of the director of purchases. The director of purchases shall:

(a) Purchase, rent or otherwise provide for the furnishing of supplies, materials, equipment or contractual services for all state agencies.

(b) Have power to authorize any state agency to purchase directly certain specified supplies, materials, equipment or contractual services under prescribed conditions and procedures.

(c) Prescribe the manner in which supplies, materials and equipment shall be purchased, delivered and distributed.

(d) Prescribe the time, manner and authentication of making requisitions for supplies, materials, equipment and contractual services.

(e) Establish standards of quality and quantity and develop standard specifications in consultation with the several state agencies.

(f) Prescribe the manner of making chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications and the manner in which state agencies shall inspect all deliveries of supplies, materials and equipment.

(g) Prescribe the amounts and form of, accounting for and disposition of any deposit or bond required to be submitted with a bid or a contract and the amount of any such deposit or bond to be given for the faithful performance of a contract.

(h) Require reports by state agencies of stocks of supplies, materials and equipment on hand and prescribe the form of such reports and deliver copies of such reports to the director of purchases and the director of accounts and reports.

History: L. 1953, ch. 375, § 38; L. 1963, ch. 432, § 1; L. 1972, ch. 332, § 79; L. 1983, ch. 290, § 3; L. 1986, ch. 327, § 4; L. 1987, ch. 341, § 4; April 30.

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Attach 1

75-3739. Competitive bids, exceptions; reports of purchases without bids, waivers of bid solicitation publication and delegations of purchasing authority; highway contracts exemption; state agency contracts exemption; prior approval of real property leases. In the manner as provided in this act and rules and regulations established thereunder:

(a) All contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required: (1) For contractual services when, in the judgment of the director of purchases, no competition exists; or (2) when, in the judgment of the director of purchases, chemicals and other material or equipment for use in laboratories or experimental studies by state agencies are best purchased without competition, or where rates are fixed by law or ordinance; or (3) when, in the judgment of the director of purchases, an agency emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services; or (4) when any statute authorizes another procedure or provides an exemption from the provisions of this section.

The director of purchases shall make a detailed report at least once in each calendar quarter to the legislative coordinating council and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations of all contracts for goods, supplies, materials, equipment or contractual services entered into without competitive bids under subsections (a)(1), (a)(2), (a)(3) or (g).

(b) If the amount of the purchase is estimated to exceed approximately \$10,000, sealed bids shall be solicited by notice published once in the Kansas register not less than 10 days before the date stated therein for the opening of such bids. The director of purchases may waive this publication of notice requirement when the director determines that a more timely procurement is in the best interest of the state. The director of purchases also may designate a trade journal for such publication. The director of purchases also shall solicit such bids by sending notices by mail to prospective bidders. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice. The director of purchases shall make a detailed report at least once in each calendar quarter to the legislative coordinating council and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations of all cases when the publication of notice of bid solicitations in the Kansas register have been waived under this subsection.

(c) All purchases estimated to exceed approximately \$5,000 but not more than \$10,000, shall be made after receipt of sealed bids following at least three days' notice posted on a public bulletin board in the office of the director of purchases. The director of purchases also may solicit sealed bids by mail in such cases in like manner as provided in subsection (b).

(d) All purchases estimated to be less than \$5,000 may be made after the receipt of three or more bid solicitations by telephone and after receipt of sealed bids following at least three days' notice posted on a public bulletin board in the office of the director of purchases. Such bids shall be recorded as provided in subsection (e) of K.S.A. 75-3740 and amendments thereto. With the approval of the secretary of administration, the director of purchases may delegate authority to any state agency to make purchases of less than \$10,000 either on the open market or under certain prescribed conditions and procedures. The director of purchases shall make a report at least once in each calendar quarter to the legislative coordinating council and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations of all current and existing delegations of authority under this subsection to state agencies.

(e) Subject to the provisions of subsection (d), contracts and purchases shall be based on specifications approved by the director of purchases. When deemed applicable and feasible by the director of purchases, such specifications shall include either energy efficiency standards or appropriate life cycle cost formulas, or both, for all supplies, materials, equipment and contractual services to be purchased by the state. The director of purchases may reject a contract or purchase on the basis that a product is manufactured or assembled outside the United States. No such specifications shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services.

(f) Notwithstanding anything herein to the contrary, all contracts with independent construction concerns for the construction, improvement, reconstruction and maintenance of the state highway system and the acquisition of rights-of-way for state highway purposes shall be advertised and let as now or hereafter provided by law.

(g) The director of purchases may authorize state agencies to contract for services and materials with other state agencies, or with federal agencies, political subdivisions of Kansas, agencies of other states or subdivisions thereof, or private nonprofit educational institutions, without competitive bids.

(h) Except as otherwise specifically provided by law, no state agency shall enter into any lease of real property without the prior approval of the secretary of administration. Such state agency shall submit to the secretary of administration such information relating to any such proposed lease as the secretary may require. The secretary of administration shall either approve, modify and approve or reject any such proposed lease.

History: L. 1953, ch. 375, § 39; L. 1968, ch. 311, § 2; L. 1975, ch. 450, § 1; L. 1978, ch. 357, § 1; L. 1979, ch. 289, § 5; L. 1980, ch. 279, § 1; L. 1981, ch. 324, § 25; L. 1984, ch. 325, § 1; L. 1987, ch. 341, § 5; L. 1987, ch. 196, § 19; L. 1987, ch. 342, § 1; L. 1987, ch. 343, § 1; L. 1987, ch. 343, § 2; July 1.

75-3799. Financial services for state agencies; procedures for acquisition; negotiating committee. (a) Upon request of the

chief administrative officer of a state agency and subject to the approval of the secretary of administration, the director of purchases may convene a financial services negotiating committee to obtain financial services for the state agency under this section.

(b) Each financial services negotiating committee shall be composed of (1) the director of purchases, or a person designated by the director of purchases, (2) the chief administrative officer of the state agency needing financial services, or a person designated by the officer, and (3) the director of accounts and reports, or a person designated by the director of accounts and reports.

(c) The financial services negotiating committee is authorized to negotiate contracts with qualified parties to provide financial services, including services relating to installment purchase, lease, or lease-purchase of equipment or to other financial related services needed by the state agency.

(d) Prior to negotiating for financial services, the committee shall advertise for proposals, negotiate with one or more of the firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing financial services.

(e) Contracts entered into pursuant to this section for financial services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and any amendments thereto.

History: L. 1984, ch. 308, § 1; May 17.

75-37,101. Certificate of participation financing; purpose; authorization and approval. (a) The secretary of administration is authorized to enter into certificate of participation financing arrangements to provide financing or refinancing for personal property and fixtures acquired for one or more state agencies, subject to approval of the state finance council, acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c and amendments thereto, **except that such approval may also be given when the legislature is in session.**

(b) As used in this section, certificate of participation financing means an installment purchase or lease purchase agreement that is subject to appropriations and which is structured to allow investors to receive a portion of the principal and interest payments made by state agencies as required by the agreement.

History: L. 1985, ch. 270, § 1; May 9.

**Article 47.—INFORMATION SYSTEMS
AND COMMUNICATIONS**

75-4706. Contracts for data processing equipment; restrictions. (a) No state agency, as defined in K.S.A. 75-3701 and amendments thereto, shall lease, cause to be leased, purchase, contract for, issue a letter of intent to contract for or cause to be installed, any data processing equipment, including auxiliary equipment or any data processing programs or systems, without the prior approval of the secretary of administration or specific legislative authorization. The director of accounts and reports shall not issue any warrant in payment for any lease or purchase contract for any data processing equipment, programs and systems acquired without such prior approval or authorization.

(b) All specifications for bids for acquisition of the data processing equipment, including auxiliary equipment and data processing programs and systems, shall be prepared by the director of information systems and communications, under the supervision of the secretary of administration. This subsection shall not apply to universities under the jurisdiction and control of the state board of regents or to the Kansas lottery.

History: L. 1965, ch. 472, § 2; L. 1972, ch. 332, § 94; L. 1974, ch. 399, § 10; L. 1980, ch. 284, § 28; L. 1984, ch. 323, § 11; L. 1987, ch. 292, § 29; March 19.

75-4707. Contracts by state agencies for purchase, transfer and lease back of data processing equipment. Notwithstanding the provisions of K.S.A. 75-3738 and 75-3739 and amendments thereto, state agencies using data processing equipment under lease are hereby authorized to enter into contracts with leasing service companies for purchase by the agency of such equipment with nonstate funds furnished by such leasing service companies and transfer of title to such equipment by the agency to such leasing service company for lease back to the agency. Any such contract shall first be approved by the secretary of administration.

History: L. 1969, ch. 409, § 1; L. 1972, ch. 332, § 95; L. 1974, ch. 399, § 11; L. 1980, ch. 284, § 29; L. 1984, ch. 323, § 12; July 1.

75-3025. Contracts for excessive expenditures; penalty. Any officer or agent of the state who shall be empowered to expend any public monys, or to direct such expenditures, is hereby prohibited from making any contract for the erection or repair of any building, or for any other purpose, whereby the expenditure of any greater sum of money shall be contemplated, agreed to, or required, than is expressly authorized by law; and any officer or agent of the state violating this law shall be deemed guilty of embezzlement of the amount in excess of that expressly authorized by law, and upon conviction shall be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months.

History: L. 1886, ch. 103, § 1; Feb. 27; R.S. 1923, 75-3025.

75-3026. Accounts of expenditures; penalty. Whenever an appropriation shall be made by the state for any purpose, to be expended by the state, the officer or person having charge of such fund shall keep an account thereof, showing when, to whom and for what purpose any portion of said fund has been expended; and if any officer, agent, trustee, director or any other person shall grant, allow, audit, take or present any voucher for a greater sum of money than was actually appropriated, paid or expended for the purpose stated or indicated in said appropriation, he or she shall be deemed guilty of embezzlement, and shall be punished by confinement and hard labor not exceeding five years, or in the county jail not less than six months.

History: L. 1886, ch. 103, § 2; Feb. 27; R.S. 1923, 75-3026.

**Article 89.—DEVELOPMENT FINANCE
AUTHORITY**

74-8901. Citation of act. The provisions of this act shall be cited as the Kansas development finance authority act.

History: L. 1987, ch. 57, § 1; May 28.

74-8902. Definitions. The following words or terms used in this act shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Act" means the Kansas development finance authority act.

(b) "Authority" means the Kansas development finance authority created by K.S.A. 1987 Supp. 74-8903.

(c) "Agricultural business enterprises" means facilities supporting or utilized in the operation of farms, ranches and other agricultural, aquacultural or silvicultural commodity producers and services provided in conjunction with the foregoing.

(d) "Board of directors" means the board of directors of the authority created by K.S.A. 1987 Supp. 74-8903.

(e) "Bonds" means any bonds, notes, debentures, interim certificates, grant and revenue anticipation notes, interest in a lease, lease certificate of participation or other evidences of indebtedness, whether or not the interest on which is subject to federal income taxation, issued by the authority pursuant to this act.

(f) "Capital improvements" means any physical public betterment or improvement or any preliminary plans, studies or surveys relative thereto; land or rights in land, including, without limitations, leases, air rights, easements, rights-of-way or licenses; and any furnishings, machinery, vehicles, apparatus or equipment for any public betterment or improvement.

(g) "Construct" means to acquire or build, in whole or in part, in such manner and by such method as the authority shall determine to be in the public interest and necessary to accomplish the purposes of and authority set forth in this act.

(h) "Loans" means loans made for the purposes of financing any of the activities authorized within this act, including loans made to financial institutions for funding or as security for loans made for accomplishing any of the purposes of this act and reserves and expenses appropriate or incidental thereto.

(i) "Educational facilities" means real, personal and mixed property of any and every kind intended by an educational institution in furtherance of its educational program.

(j) "Facilities" means any real property, personal property or mixed property of any and every kind.

(k) "Health care facilities" means facilities for furnishing physical or mental health care.

(l) "Housing development" means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this act for the primary purpose of providing dwelling accommodations for elderly persons and families of low income in need of housing.

(m) "Industrial enterprise" means facilities for manufacturing, producing, processing, assembling, repairing, extracting, warehousing, distributing, communications, computer services, transportation, corporate and management offices and services provided in connection with any of the foregoing, in isolation or in any combination, that involve the creation of new or additional employment or the retention of existing employment.

(n) "Political subdivision" means political or taxing subdivisions of the state, including municipal and quasi-municipal corporations, boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups or administrative units thereof, receiving or expending and supported, in whole or in part, by public funds.

(o) "Pooled bonds" means bonds of the authority, the interest on which is subject to federal income taxation, which are issued for the purpose of acquiring bonds issued by two or more political subdivisions.

(p) "State" means the state of Kansas.

(q) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of this state.

History: L. 1987, ch. 57, § 2; May 28.

74-8905. Same: issuance of bonds, authorization, purposes, limitations and conditions; proceeds of bonds, disposition. (a) The authority is hereby authorized and empowered to issue bonds, either for a specific activity or on a pooled basis for a series of related or unrelated activities or projects duly authorized by a political subdivision or group of political subdivisions of the state in such amounts as shall be determined by the authority for the purpose of financing capital improvement facilities, educational facilities, health care facilities and housing developments. Nothing in this act shall be construed to authorize the authority to issue bonds or use the proceeds thereof to (1) purchase, condemn, or otherwise acquire a utility plant or distribution system owned or operated by a regulated public utility or (2) finance any capital improvement facilities, educational facilities, or health care facilities which are authorized under the laws of the state to be financed by the issuance of general obligation or utility revenue bonds of a political subdivision, except that the acquisition by the authority of general obligation or utility revenue bonds issued by political subdivisions with the proceeds of pooled bonds shall not violate the provisions of the foregoing.

(b) The authority is hereby authorized and empowered to issue bonds for activities and projects of state agencies as requested by the secretary of administration. No bonds may be issued pursuant to this act for any activity or project of a state agency unless the activity or project either has been approved by an appropriation or other act of the legislature or has been approved by the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c and amendments thereto. When requested to do so by the secretary of administration, the authority is further authorized and empowered to issue bonds for the purpose of refunding, whether at maturity or in advance of maturity, any outstanding bonded indebtedness of any state agency. The revenues of any state agency which are pledged as security for any bonds of such state agency which are refunded by refunding bonds of the authority may be pledged to the authority as security for the refunding bonds.

(c) The authority is hereby authorized and empowered to issue bonds for the purpose of financing industrial enterprises, agricultural business enterprises, educational facilities, health care facilities and housing developments, or any combination of such facilities, or any interest in facilities, including without limitation leasehold interests in and mortgages on such facilities. No less than 30 days prior to the issuance of any bonds authorized under this act with respect to any project or activity which is to be undertaken for the direct benefit of any person or entity which is not a state agency or a political subdivision, written notice of the intention of the authority to provide financing and issue bonds therefor shall be given by the president of the authority to the governing body of the city in which the project or activity is to be located, or, if the project or activity is not proposed to be located within a city, such notice shall be given to the governing body of the county. No bonds for the financing of the project or activity shall be issued by the authority for a one-year period if, within 15 days after the giving of such notice, the governing body of the political subdivision in which the project or activity is proposed to be located shall have duly enacted an ordinance or resolution stating express disapproval of the project or activity and shall have notified the president of the authority of such disapproval.

(d) The authority is hereby authorized and empowered to issue bonds for the purpose of establishing and funding one or more series of venture capital funds in such principal amounts, at such interest rates, in such maturities, with such security, and upon such other terms and in such manner as is approved by resolution of the authority. The proceeds of such bonds not placed in a venture capital fund or used to pay or reimburse organizational, offering and administrative expenses and fees necessary to the issuance and sale of such bonds shall be invested and reinvested in such securities and other instruments as shall be provided in the resolution under which such bonds are issued. Moneys in a venture capital fund shall be used to make venture capital in-

vestments in new, expanding or developing businesses, including, but not limited to, equity and debt securities, warrants, options and other rights to acquire such securities, subject to the provisions of the resolution of the authority. The authority shall establish an investment policy with respect to the investment of the funds in a venture capital fund not inconsistent with the purposes of this act. The authority shall enter into an agreement with a management company experienced in venture capital investments to manage and administer each venture capital fund upon terms not inconsistent with the purposes of this act and such investment policy. The authority may establish an advisory board to provide advice and consulting assistance to the authority and the management company with respect to the management and administration of each venture capital fund and the establishment of its investment policy. All fees and expenses incurred in the management and administration of a venture capital fund not paid or reimbursed out of the proceeds of the bonds issued by the authority shall be paid or reimbursed out of such venture capital fund.

(c) The authority is hereby authorized and empowered to use the proceeds of any bond issues herein authorized, together with any other available funds, for venture capital investments or for purchasing, leasing, constructing, restoring, renovating, altering or repairing facilities as herein authorized, for making loans, purchasing mortgages or security interests in loan participations and paying all incidental expenses therewith, paying expenses of authorizing and issuing the bonds, paying interest on the bonds until revenues thereof are available in sufficient amounts, purchasing bond insurance or other credit enhancements on the bonds, and funding such reserves as the authority deems necessary and desirable. All moneys received by the authority, other than moneys received by virtue of an appropriation, are hereby specifically declared to be cash funds, restricted in their use and to be used solely as provided herein. No moneys of the authority other than moneys received by appropriation shall be deposited with the state treasurer.

History: L. 1987, ch. 57, § 5; May 28.



DEPARTMENT OF ADMINISTRATION

State Capitol
Topeka 66612-1572
(913) 296-3011

December 11, 1987

H. Edward Flentje, *Secretary*MEMORANDUM

TO: Members of the Senate Ways and Means Committee and House Appropriations Committee

FROM: H. Edward Flentje, Secretary of Administration

SUBJECT: Suggested guidelines for state agency use of equipment installment purchase agreements

Each year the State of Kansas makes a substantial investment in capital outlay for equipment. In fiscal year 1988, the Governor's budget recommendation for capital outlay expenditures from all funds was \$59,063,888. Of that amount, \$12,459,525 or twenty-one percent (21%) will be used for installment purchase payments.

In FY 1988, installment purchase payments will amount to approximately 0.8% of the Governor's budget recommendation for expenditures from all funds for state operations. To exercise oversight on the use of installment purchases, the Department of Administration suggests the following guidelines for consideration:

1. **Nature of purchase.** Installment purchases should be restricted to the procurement of capital equipment and services directly related to such procurement. No supplies, consumables, or service contracts should be purchased through installments.
2. **Length of installment purchase agreements.** Installment purchase agreement terms should not exceed the useful economic life of the equipment being purchased. For example, telecommunications wiring may have a useful life of up to ten years, main frame computers up to five years, and printers and terminals up to three years.

The director of purchases should develop useful economic-life parameters for use in all capital equipment acquisitions with the exception of data processing equipment, whose useful economic-life parameters should be determined by the director of information systems and communications.

Attach 2

3. **Minimum amount per procurement.** Agencies should limit their use of installment purchase agreements to equipment procurement projects of \$15,000 or more. Agencies with a procurement of less than \$15,000 should make such purchases outright. Exceptions to these guidelines should be authorized on a case by case basis possibly by the secretary of administration upon recommendation by the director of the division of purchases.

4. **Certification of budget.** In compliance with instructions from the Division of the Budget regarding the completion of budget submissions, each agency head should insure that all anticipated equipment procurements for the coming fiscal year are identified in the agency's annual budget as to outright purchase or installment purchase.

State agencies requesting procurement of equipment on installment purchase should certify to the director of purchases that the equipment was not originally included in the agency's budget as an approved outright purchase by the state legislature.

On the aggregate, the Department of Administration will monitor the level of installment purchase payments as a percentage of the state's total capital outlay expenditures each fiscal year, in order to assess agency use of this procedure. At the same time, agencies should not overlook the potential benefits of matching the payment for certain items of equipment with the equipment's expected service life. The Department of Administration will continue to pool agency equipment needs in order to provide funds at lower rates where sensible in making installment purchase procurements through the certificate of participation program.



DEPARTMENT OF ADMINISTRATION

LEGAL SECTION

107 Landon State Office Building

900 Jackson

Topeka, Kansas 66612-1214

(913) 296-6000

H. Edward Flentje
Secretary of Administration

Arthur H. Griggs
Chief Attorney

MEMORANDUM

TO: H. Edward Flentje
Secretary of Administration

FROM: Arthur H. Griggs
Chief Attorney *AG*

SUBJECT: Installment Purchases

DATE: December 11, 1987

This memo is in response to your request that I review the procedures and statutes relating to installment purchases of equipment.

I. Who obligates the State on installment purchase contracts?

The user state agencies decide on whether a particular item of equipment is to be purchased outright, rented, or purchased on installment.

A typical installment purchase procurement is outlined as follows:

A. Budget. Annual budget instructions require all non-regents' agencies to identify in their budget submissions which of their anticipated equipment procurements will be made using installment purchase arrangements. Legislative appropriations committees review these submissions as part of the budget process.

B. Purchase requisition. The user state agency sends the Division of Purchases a purchase requisition for

H. Edward Flentje
December 11, 1987
Page 2

the equipment desired. The requisition describes the equipment, indicates the agency's estimate of cost and may include a set of proposed specifications. If an installment purchase is desired, the requisition will identify the time frame and frequency of installment payments.

C. Bidding. Division of Purchases sends bids to vendors of the equipment. Generally, bidders would be required to bid both an outright purchase price and an installment purchase amount, as well as the interest rate upon which the installment payment is based.

D. Award. The Division of Purchases determines the lowest bid meeting specifications and advises the user state agency. In more complex procurements the user state agency may be asked to review the bids and comment to the Division of Purchases; however, the Division of Purchases still is the agency responsible for determining the winning bidder. If the user agency elects to proceed with the procurement, the winning bidder is so advised.

E. Contract. The user state agency is responsible for the preparation of the contract, signing it, obtaining the vendor's signature and submitting it to the Department of Administration. The contract is not to become effective until the director of Purchases has approved it (to insure it is consistent with the bid) and the director of Accounts and Reports has approved it (to encumber the user agency's appropriated funds for the current year portion of the obligation).

F. Contractual provision attachment. Attached is a DA146a form that is generally attached to any vendor contract. It contains standard contractual provisions such as the termination for nonappropriation clause. It also contains language recognizing that state agencies do not purchase insurance for equipment and other provisions designed to override unfavorable terms and conditions that might be contained in vendor's form contracts.

II. Are state agencies required to purchase insurance for equipment purchased on installment?

Generally, state agencies are not authorized to purchase casualty insurance for any equipment (K.S.A. 75-4101 et seq.). If a vendor is utilizing a third party

H. Edward Flentje
December 11, 1987
Page 3

financing company that requires insurance, the equipment may be insured, but the insurance amount would be embedded in the installment purchase price. In the vast majority of cases the equipment being purchased on installment is not insured; however, the risk of loss or damage to the equipment is borne by the user state agency.

III. Does the use of installment purchases by state agencies violate the cash basis law or constitutional provisions relating to debt?

The cash basis law (K.S.A. 10-1101 et seq.) applies to local units of government, not state agencies. Prior Attorney General opinions have held that local units of government do not violate the cash basis law in instances where an installment purchases agreement is couched in terms so that the governmental unit is obligated to pay only from monthly installments "as may lawfully be made from funds budgeted and appropriated."

While the cash basis law is not applicable to state agencies, K.S.A. 75-3025 is applicable to state agencies and is substantially similar to the cash basis law by providing as follows:

"Any officer or agency of the state...is hereby prohibited from making any contract...whereby the expenditure of any greater sum of money shall be contemplated, agreed to, or required, than is expressly authorized by law;...."

The lawful amount of a state officer's or agency's expenditure of funds is prescribed by the legislative appropriations of monies to such officer or agency for a stated purpose.

K.S.A. 75-3025 does not preclude contracts exceeding the period of time for which current appropriations are available, so long as the contract includes a contingency provision for the termination of the contract should further monies to fund the contract not be appropriated. The state is not bound by a contract containing a termination for lack of appropriation clause for a period

H. Edward Flentje
December 11, 1987
Page 4

of time longer than the period for which money has been appropriated.

There are state constitutional provisions relating to the state contracting for public debts (Article XI, section 6,7 and 8). Kansas Supreme Court cases have held that these provisions relate only to state debts to be paid by property taxes (for example, see 163Kan240); thus, these constitutional provisions do not prohibit installment purchase contracts.

IV. Can the Department of Administration limit the use of installment purchase financing by executive branch state agencies under current law?

There is no statute that specifically permits the Department of Administration to limit or exercise power regarding installment purchase; however, general procurement provisions in K.S.A. 75-3738 and 75-3739 provide broad authority for the director of purchases to control procurements.

K.S.A. 75-3738 provides in part as follows:

"The director of purchases shall:

(1) Purchase, grant or otherwise provide for the furnishing of supplies, materials, equipment or contractual services for all state agencies...

(3) Prescribe the manner in which supplies, materials, and equipment shall be purchased, delivered and distributed.

(4) Prescribe the time, manner and authentication for making requisitions for supplies, materials, equipment and contractual services." (Underlining added)

The above language does, in my judgment, permit the director of purchases to control the use of installment purchases by executive branch state agencies, except in the case of data processing equipment for use by

universities under the jurisdiction under the State Board of Regents as addressed in the next paragraph.

Specifications for bids for the acquisition of data processing equipment are required by statute to be prepared by the Director of Information Systems and Communications (DISC) per subsection (b) of K.S.A. 75-4706. This subsection does not apply to regent's institutions. Also, there is in my judgment, a practical aspect that makes it impractical to try to apply controls on installment purchases by Board of Regents institutions. Board of Regents institutions do not prepare budgets that identify specific capital outlay items or whether such items would be purchased outright or on an installment purchases basis. Total appropriations for other operating expenses (OOE) for Regents institutions are handled in the Governor's budget recommendations and legislative appropriations process by addressing general percentage increases for OOE rather than by arriving at the total OOE by enumerating, by object code, where the OOE will be increased.

- V. What is the difference between equipment financed on installment purchase with vendors or third party leasing companies and equipment financed through the certificate of participation program?

Equipment financed through a vendor, a third party leasing company, or the certificate of participation program are all installment purchase procurements. When a vendor quotes an installment purchase price in a bid, the bid reflects the vendor's skill at obtaining low cost financing. As would be expected, there is a wide variation among vendors.

Under the certificate of participation program, the state arranges the financing, separate and apart from the procurement of the equipment. In such cases the winning vendor for equipment is the lowest bidder meeting specification on an outright purchase rather than the low bidder on the installment purchase price. While it is difficult to provide a solid figure for the reduced interest expense that a particular certificate of participation issue may mean for state agencies, there is past data that provides some gauge. The use of certificates of participation to purchase new equipment,

H. Edward Flentje
December 11, 1987
Page 6

as an alternative to using vendor or third-party contracts, will generally save the state agencies between two and seven percentage points in interest rates. As an example, a \$1.66 million refinancing the state did of vendor financed equipment resulted in a reduction of \$190,000 in interest expense.

VI. How have the federal tax law changes of last year affected the certificate of participation program?

The most important aspect of federal tax law with regard to the certificate of participation program remains unchanged. The interest component that the state pays on an installment purchase to a vendor or through the certificate of participation program is exempt from federal income tax for the recipient. For this reason, investors in certificates of participation will take a lower interest rate than they would if they were purchasing a U.S. Government security or other taxable investment. One federal tax law change last year that adversely affects the certificate of participation program relates to restrictions on interest earnings on the certificate of participation proceeds. Under the prior tax code, we might have been paying 7% to the holders of the certificates of participation while the reserve funds and acquisition funds (certificate proceeds before they are used to buy equipment) were earning 8%. These excess interest earnings over interest expense were passed on to user state agencies through reduction in base payments on the equipment. The new tax code now limits the amount of interest earnings the state can realize on the certificate proceeds to the level of interest they are paying as interest expense.

VII. Can the state save money by prohibiting the use of all installment purchase contracts or discontinuing the certificate of participation program?

Discontinuing the certificate of participation program, while continuing to permit installment purchases with vendors or third-party financing companies would increase costs to state government. Certificate of participation financing is merely a lower cost method of providing installment purchase financing.

Discontinuing all installment purchases could result in higher state costs if state agencies started renting needed equipment instead of purchasing it on an

H. Edward Flentje
December 11, 1987
Page 7

installment basis. Under renting, the state builds no equity in the equipment. Renting equipment is often the most expensive method of obtaining the use of equipment; however, renting is appropriate for some needs. Lastly, totally foregoing equipment may be the more expensive route if the equipment provides savings in other areas, such as energy efficiency or labor costs.

VIII. Why should state agencies ever use installment purchase?

The use of installment purchase for the procurement of capital equipment, having relatively long useful service lives, as opposed to outright purchase of the equipment, is an example of the "pay-as-we-use" principle of capital asset management. This principle holds that the capital outlay for an asset should match as closely as is practical the depletion of the value or usefulness of the asset to its owner. The accrual method of accounting reflects this principle by expensing depreciation of capital assets and reducing the asset's value on the owner's balance sheet.

An adjunct to the "pay-as-we-use" principle is the equity principle inherent in "user fee" financing, in which those who actually benefit from an asset's use pay for it. Under "pay-as-we-use" financing, the asset is paid for over the period of time during which the asset is in service and affords benefits for those who use it. Under "pay-as-we-go" financing, future users (or taxpayers) may benefit from an asset for which they pay nothing.

The alternatives to the installment purchase of needed capital equipment are outright purchase of the equipment and equipment rental. Outright purchase follows the "pay-as-we-go" principle of capital finance and is the appropriate way to go in most less-expensive equipment procurements, in that it avoids unnecessary interest cost. Outright purchase of major equipment, however, can severely limit an agency's flexibility in committing its resources in the most effective manner.

AHG:dp
4864A

attachment

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The provisions found in Contractual Provisions Attachment (form DA-146a), which is attached hereto and executed by the parties to this agreement, are hereby incorporated in this contract and made a part hereof."

The undersigned parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being dated the ____ day of _____, 19____.

1. TERMS HEREIN CONTROLLING PROVISIONS

It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. AGREEMENT WITH KANSAS LAW

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. TERMINATION DUE TO LACK OF FUNDING APPROPRIATION

If, in the judgment of the Director of Accounts and Reports, State Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. DISCLAIMER OF LIABILITY

Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor for any liability whatsoever.

5. ANTI-DISCRIMINATION CLAUSE

The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and to not discriminate against any person who performs work hereunder, because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in this work, national origin or ancestry; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 1978 Supp. 44-1031; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such act by the Kansas Commission on Civil Rights, shall constitute a breach of the contract and it may be cancelled, terminated or suspended in whole or in part by the Director of Purchases, State Department of Administration.

Parties to this contract understand that subsections (b) through (e) of this paragraph number 5 are not applicable to a contractor who employs fewer than four employees or whose contract with this agency of the Kansas state government total less than \$5,000 during this fiscal year.

6. ACCEPTANCE OF CONTRACT

This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. ARBITRATION, DAMAGES, WARRANTIES

Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges; and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. REPRESENTATIVE'S AUTHORITY TO CONTRACT

By signing this document, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this document on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. RESPONSIBILITY FOR TAXES

The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. INSURANCE

The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the state to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 1979 Supp. 75-6101 *et seq.*), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

Vendor/Contractor:

Agency Head/Authorized Representative:

Date Signature

Title

Date Signature

Title

Agency
 State of Kansas
 Agency Installment Purchase Obligations
 Grand Summary
 As of July 31, 1987

	Fiscal 88	Fiscal 89	Fiscal 90	Fiscal 91	Fiscal 92	Fiscal 93	Fiscal 94	Fiscal 95	Fiscal 96	Fiscal 97	Fiscal 98	Tot. Obl.
1 Subtotal, Board of Regents, Vendor	1,911,806	1,590,600	1,135,633	311,676	121,485	28,296	28,296	26,398				5,154,188
2 Subtotal, Board of Regents, C.O.P.	2,834,635	2,763,091	1,464,023	568,619	209,918							7,840,286
3 Subtotal, Bd. of Regents, C.O.P., 1987	371,531	839,846	831,187	659,457	288,011	125,571						3,115,603
4 Total, Board of Regents	5,117,972	5,193,537	3,430,842	1,539,751	619,414	153,867	28,296	26,398				16,110,076
5 Subtotal, Disc, Vendor	361,999	311,310	292,875	292,875	145,280							1,404,339
6 Subtotal, Disc, C.O.P.	2,188,839	1,651,729	1,317,356	1,050,513	105,331							6,313,767
7 Subtotal, Disc, C.O.P., 1987	422,441	907,566	905,642	662,127	442,556	271,541						3,611,872
8 Total, DISC	2,973,279	2,870,605	2,515,872	2,005,514	693,166	271,541						11,329,978
9 Subtotal, Telecom., Vendor	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952				11,471,613
10 Subtotal, Telecom., C.O.P.	1,922,063	2,447,862	2,447,862	2,447,862	2,151,796	1,715,201	1,666,234	1,666,234	1,666,234	1,513,655	463,233	20,108,238
11 Subtotal, Telecom., C.O.P., 1987	16,076	192,916	192,916	192,916	192,916	176,839						964,579
12 Total, Telecommunications	3,372,091	4,074,730	4,074,730	4,074,730	3,778,664	3,325,992	3,100,186	3,100,186	1,666,234	1,513,655	463,233	32,544,429
13 Subtotal, Misc. Agencies, Vendor	452,334	373,957	286,924	266,431	249,666	249,336	249,336	249,336	249,336	20,778		2,647,435
14 Subtotal, Misc. Agencies, C.O.P.	345,558	270,023	139,023	65,980	19,039							839,624
15 Subtotal, Misc. Agencies, C.O.P., 1987	198,290	1,647,796	1,885,026	1,792,710	1,746,342	1,603,770	248,246					9,122,182
16 Total, Miscellaneous Agencies	996,183	2,291,776	2,310,973	2,125,122	2,015,048	1,853,106	497,582	249,336	249,336	20,778		12,609,241
17 Total, Installment Purchases	12,459,525	14,430,648	12,332,418	9,745,117	7,106,291	5,604,506	3,626,063	3,375,920	1,915,570	1,534,433	463,233	72,593,725
Percent of Total Installment Purchases:												
18 Board of Regents Agencies	41.00%	36.00%	28.00%	16.00%	9.00%	3.00%	1.00%	1.00%				22.00%
19 Department of Administration, DISC	24.00%	20.00%	20.00%	21.00%	10.00%	5.00%						16.00%
20 Telecommunications	27.00%	28.00%	33.00%	42.00%	53.00%	59.00%	85.00%	92.00%	87.00%	99.00%	100.00%	45.00%
21 Miscellaneous Agencies	8.00%	16.00%	19.00%	22.00%	28.00%	33.00%	14.00%	7.00%	13.00%	1.00%		17.00%
22 Total	100.00%	100.00%	100.00%	101.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

J + SWAM + HARPER
 12/4/87
 Attach 4

State of Kansas
 Agency Installment Purchase Obligations
 Vendor or Third Party
 Summary
 As of July 31, 1987

Agency	Fiscal 88	Fiscal 89	Fiscal 90	Fiscal 91	Fiscal 92	Fiscal 93	Fiscal 94	Fiscal 95	Fiscal 96	Fiscal 97	Fiscal 98	Total Obligation
1 Kansas State University	64,679	51,063	31,150	20,355	8,694							175,941
2 Emporia State University	50,484	25,461	7,588	7,588	632							91,752
3 Pittsburg State University	77,554	70,028										147,582
4 University of Kansas	356,057	329,798	37,507	16,210	5,523	5,523	5,523	5,523				761,664
5 Univ. of Ks. Med. Center	1,332,588	1,085,203	1,045,707	253,842	99,796	22,773	22,773	20,875				3,883,557
6 Wichita State University	30,444	29,047	13,680	13,680	6,840							93,692
7 Subtotal, Board of Regents Agencies	1,911,806	1,590,600	1,135,633	311,676	121,485	28,296	28,296	26,398				5,154,188
8 Subtotal, Dept. of Admin., DISC	361,999	311,310	292,875	292,875	145,280							1,404,339
9 Subtotal, Telecommunications	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952	1,433,952				11,471,613
10 Adjutant General's Department	970											970
11 Attorney General - KBI	7,964	7,964	5,302	1,980								23,209
12 Department of Administration	319,361	303,206	269,573	257,570	249,336	249,336	249,336	249,336	249,336	20,778		2,417,167
13 Department of Health and Environment	12,825	6,232	1,885									20,942
14 Department of Transportation	3,060	3,060	2,295									8,415
15 Kansas Highway Patrol	996	996	996	664								3,652
16 Kansas State Industrial Reformatory	660	660	660	660								2,640
17 Kansas Insurance Department	5,913	1,806	985	328								9,032
18 Kansas State Fair	3,909	3,909	3,909	3,909								15,637
19 Larned State Hospital	833											833
20 Kansas State Penitentiary	660	660	660	660	330							2,970
21 Reception and Diagnostic Center	660	660	660	660								2,640
22 Kansas School for the Deaf	3,025	252										3,278
23 Social and Rehabilitation Services	73,641	26,694										100,336
24 Winfield State Hospital	17,858	17,858										35,716
25 Subtotal, Miscellaneous Agencies	452,334	373,957	286,924	266,431	249,666	249,336	249,336	249,336	249,336	20,778		2,647,435
26 Total Purchases Using Vendors	4,160,091	3,709,819	3,149,383	2,304,933	1,950,382	1,711,583	1,711,583	1,709,686	249,336	20,778		20,677,575

State of Kansas
 Agency installment Purchase Obligations
 Using Certificates of Participation, 1986 Issue
 Summary
 As of July 1, 1987

Agency	Fiscal 88	Fiscal 89	Fiscal 90	Fiscal 91	Fiscal 92	Fiscal 93	Fiscal 94	Fiscal 95	Fiscal 96	Fiscal 97	Fiscal 98	Total Obligation
1 Fort Hays State University	138,720	100,179										238,899
2 Kansas State University	355,268	342,393	225,555	51,673	5,591							980,480
3 Ks. St. Univ. - Vet. Medical Center	66,043	66,043	66,042	19,104								217,231
4 Emporia State University	36,978	33,610	26,335	21,844	9,921							128,688
5 Pittsburg State University	140,802	83,160	80,010	78,870	39,219							422,061
6 University of Kansas	581,618	698,716	464,829	60,089	21,744							1,826,996
7 University of Kansas Medical Center	931,227	855,011	481,346	260,085	132,342							2,660,011
8 Wichita State University	583,980	583,980	119,906	76,954	1,101							1,365,919
9 Subtotal, Board of Regents Agencies	2,834,635	2,763,091	1,464,023	568,619	209,918							7,840,286
10 Subtotal Dept. of Administration - DISC	2,188,839	1,651,729	1,317,356	1,050,513	105,331							6,313,767
11 Subtotal, Telecommunications	1,922,063	2,447,862	2,447,862	2,447,862	2,151,796	1,715,201	1,666,234	1,666,234	1,666,234	1,513,655	463,233	20,108,238
12 Adjutant General's Dept.	1,350	1,350										2,701
13 Kansas Board of Agriculture	2,015	2,015	1,511									5,541
14 Attorney General	4,914	4,914	4,914									14,741
15 Attorney General - KBI	9,483	8,070	6,092	3,631								27,276
16 Kansas Corporation Commission	35,145	25,160										60,304
17 Office of the Governor	43,835	43,835	32,876									120,546
18 Department of Health and Environment	51,801	38,479	17,516	17,516	13,137							138,449
19 Department of Transportation	795											795
20 Kansas Highway Patrol	43,229	40,838	24,172	23,609	5,902							137,751
21 Kansas Insurance Dept.	42,506	30,054	10,764	5,382								88,706
22 Larned State Hospital	11,252	11,252	2,341									24,845
23 Kansas State Legislature	7,768	7,768	7,768	5,826								29,132
24 Legislative Post Audit	5,522	2,761										8,283
25 Department of Revenue	9,954	9,954	9,954	2,346								32,208
26 Secretary of State	3,265											3,265
27 Social and Rehabilitation Services, SRS	36,211	20,872	9,954	5,236								72,274
28 Topeka State Hospital	7,724	7,724	5,793									21,240
29 Kansas State Treasurer	28,788	14,977	5,367	2,434								51,566
30 Subtotal, Miscellaneous Agencies	345,558	270,023	139,023	65,980	19,039							839,624
31 Total Purchases Using C.D.P. (1986)	7,291,095	7,132,706	5,368,264	4,132,975	2,486,084	1,715,201	1,666,234	1,666,234	1,666,234	1,513,655	463,233	35,101,915

State of Kansas
 Agency Installment Purchase Obligations
 Using Certificates of Participation, 1987 Issue
 Summary (See Note Below)
 As of December 1, 1987

Agency	Amount Financed	Fiscal 88	Fiscal 89	Fiscal 90	Fiscal 91	Fiscal 92	Fiscal 93	Fiscal 94	Fiscal 95	Fiscal 96	Fiscal 97	Fiscal 98	Total Obligation
1 Kansas State University	945,700	147,705	259,044	257,440	242,401	161,087	47,566						1,115,243
2 Emporia State University	154,898	19,053	38,865	38,865	38,865	37,235	11,666						184,548
3 Pittsburg State University	45,350	8,649	14,826	14,826	13,591								51,892
4 University of Kansas	997,283	154,242	327,099	320,043	198,356	83,891	66,340						1,149,971
5 University of Kansas Medical Center	466,408	32,831	174,853	174,853	142,022								524,558
6 Wichita State University	77,861	9,053	25,160	25,160	24,222	5,797							89,392
7 Subtotal, Board of Regents Agencies	2,687,499	371,531	839,846	831,187	659,457	288,011	125,571						3,115,603
8 Subtotal Dept. of Admin., DISC	3,083,803	422,441	907,566	905,642	662,127	442,556	271,541						3,611,872
9 Subtotal, Telecommunications	799,700	16,076	192,916	192,916	192,916	192,916	176,839						964,579
10 Attorney General	60,500	9,031	15,482	15,482	13,951	12,858	5,357						72,162
11 Attorney General - KBI	20,000	3,395	5,821	5,821	5,821	2,425							23,283
12 Department of Administration, Not DISC	287,451	48,306	84,008	71,064	57,862	55,036	22,932						339,207
13 Kansas Insurance Dept.	20,000	2,804	4,807	4,807	4,807	4,807	2,003						24,033
14 Kansas Correctional Industries	67,567	9,472	16,239	16,239	16,239	16,239	6,766						81,193
15 Soc. and Rehab. Services, SRS	7,221,000	125,281	1,521,439	1,771,614	1,694,032	1,654,978	1,566,713	248,246					8,582,303
16 Subtotal, Miscellaneous Agencies	7,676,518	198,290	1,647,796	1,885,026	1,792,710	1,746,342	1,603,770	248,246					9,122,182
17 Total Purchases, 1987 C.O.P Issue	14,247,520	1,008,339	3,588,124	3,814,771	3,307,209	2,669,824	2,177,722	248,246					16,814,236

NOTE: Since most payments to vendors have not been made from the proceeds of the 1987 Certificate issue, calculations are not made on actual purchases. Calculations are made based on the issue as it was sized.

EXCERPT FROM:

Moody's Municipal Credit Report
State of Kansas - Kansas Development Finance Authority
Certificates of Participation dated December 1, 1987

UPDATE:

Since our last report on the state dated August 22, 1986, issued in conjunction with a similar offering of equipment certificates, tax increases and controlled expenditures have allowed the General Fund to close with an unencumbered cash balance at June 30, 1987.

Certificates of participation are being issued to provide funds for the acquisition of existing and new equipment and funding a reserve account. The certificates are secured by a proportionate interest in lease payments to be made by the State of Kansas, acting through the secretary of administration on behalf of certain state agencies. Cost savings and administrative efficiencies over lease-by-lease arrangements contribute to the benefits of this type of financing. Equipment will consist of computers, telecommunications equipment, and other items. The state may elect to substitute for some equipment items if it is unable to complete their purchase. The state issued similar certificates in 1985 and 1986, the latter for refunding.

Lease payments are subject to annual appropriations, on an agency-by-agency basis, by the state legislature. If funds or lease payments have not been appropriated by 30 days before the start of a fiscal year, the director of accounts and reports must notify the trustee within ten days; the lease agreement would then terminate at the end of the current fiscal year, the state would be required to return the equipment to the trustee and "except when needed for protection of the public health, safety, or welfare", the director of purchases shall not purchase any replacement equipment during the fiscal year for which a notice of non-appropriation is given. However, the lease agreement will not terminate after a notice of non-appropriation if, before fiscal year-end, the director of accounts and reports informs the trustee that he reasonably expects sufficient funds to be appropriated; in this case the lease term will continue into the next fiscal year so long as there is an appropriation available from which to make the lease payment.

These certificates are scheduled for final maturity in six years. The 1986 certificates are considerably longer, at 12 1/2 years. The obligation of the state to make rental payments is absolute and unconditional, except in the event of non-appropriation by the legislature. In this case, the state is obligated to return to the trustee, for the benefit

of the certificateholders, the leased equipment. In the event of default the trustee may terminate the lease agreement, and the state will be responsible for payment of the difference between the purchase option price and the net amount received from the sale of equipment returned. Payments due under the lease agreement are additionally secured by a reserve account of \$1.62 million. Payments constitute current expenses of the state and do not constitute debt of the state within any constitutional or statutory limits.

By fiscal year-end 1986 state's financial position had substantially recovered from stringency of the early 1980s, although revenue growth fell short of initial estimates throughout this period. Problems in the farm economy, the light aircraft industry, and the farm machinery industry were factors contributing to weaker financial performance in fiscal 1986. The General Fund closed with a deficit. In 1986-87 an increase of one cent in the sales tax rate and income tax windfall contributed to revenue growth of nearly 10% and expenditures were constant, allowing achievement of an unencumbered balance of about 2% of revenues. Revenues in 1987-88 are some 9% above estimates to date. The General Fund is expected to have a balance of \$100 million or more by year-end.

State of Kansas
Estimates by Agencies of Purchases of Equipment
Using Certificates of Participation, 1987 Issue
As of December 1, 1987

Agency Name	Description of Equipment	Estimated Cost
1 Attorney General	Computer Equipment	7,000
2 Attorney General	Copier	17,000
3 Attorney General	Computer Equipment	36,500
4 Ks. Bureau of Investigation	Copier	20,000
5 Dept. of Admin.-Secy Office	Computer Equipment	18,089
6 Department of Admin.-DISC	3720 Comm. Controller	36,500
7 Department of Admin.-Purch.	Computer Equipment	40,362
8 Department of Admin.-Arch.	Key System	50,000
9 Dept. of Admin.-Telecom.	Key Systems - Capital, DSOB	80,000
10 Dept. of Admin.-Telecom.	Automated Switchboard Attendant	100,000
11 Department of Admin.-Purch.	Software	126,000
12 Dept. of Admin., DISC	Display Terminals	2,057
13 Dept. of Admin., DISC	Matrix Printer	2,941
14 Dept. of Admin., DISC	Letter Quality Printer	4,107
15 Dept. of Admin., DISC	Control Unit/Multiplexor	4,371
16 Department of Admin.-DISC	Additional Features to Existing	6,000
17 Dept. of Admin., DISC	Control Unit	9,284
18 Dept. of Admin., DISC	Channel Attachments, 2	9,506
19 Dept. of Admin., DISC	Control Unit	10,113
20 Dept. of Admin., DISC	Printers, 5	14,452
21 Dept. of Admin., DISC	Control Units, 2 3274	15,226
22 Dept. of Admin., DISC	Control Units, 2 3174	20,397
23 Dept. of Admin., DISC	Control Units, 2 3174	21,270
24 Dept. of Admin., DISC	Control Units, 2	22,743
25 Department of Admin.-DISC	3480 Channel Adapters, 4	23,126
26 Department of Admin.-DISC	4121 Tandem Disc Drive	24,000
27 Dept. of Admin., DISC	Magnetic Tape Unit	28,596
28 Department of Admin.-DISC	4245 Line Printer	29,952
29 Department of Admin.-DISC	3710 Comm. Concentrator	30,300
30 Dept. of Admin., DISC	Communications Controller	32,614
31 Department of Admin.-DISC	PC/AT Microcomputers	33,600
32 Department of Admin.-DISC	3720 Comm. Concentrators, 2	36,500
33 Department of Admin.-DISC	3720 Comm. Concentrator	36,500
34 Department of Admin.-DISC	3720 Comm. Concentrator	36,500
35 Department of Admin.-DISC	3274 Terminal Controllers, 3	38,736
36 Department of Admin.-DISC	3274 Terminal Controllers, 3	38,736
37 Department of Admin.-DISC	Peripheral Switch Upgrade	41,952
38 Department of Admin.-DISC	Multiplexors, 7	42,000
39 Department of Admin.-DISC	Multiplexors, 7	42,000
40 Department of Admin.-DISC	Channel Switch Upgrade	55,165
41 Department of Admin.-DISC	Additional Features to Existing	64,800
42 Dept. of Admin., DISC	Magnetic Tape Unit and Controller	70,501
43 Department of Admin.-DISC	7380 B4 Disk Drives, 2	72,288
44 Department of Admin.-DISC	7380 B4 Disk Drives, 2	72,288
45 Dept. of Admin., DISC	Magnetic Tape Units, 2	75,860
46 Department of Admin.-DISC	3480 A22 Tape Controller	88,416
47 Department of Admin.-DISC	3480 B22 Tape Drives, 2	92,064

State of Kansas
 Estimates by Agencies of Purchases of Equipment
 Using Certificates of Participation, 1987 Issue
 As of December 1, 1987

Agency Name	Description of Equipment	Estimated Cost
48 Department of Admin.-DISC	7380 A4 Disk Drives, 2	103,104
49 Department of Admin.-DISC	7380 A4 Disk Drives, 2	103,104
50 Department of Admin.-DISC	7880 3C Disc Controller	117,696
51 Department of Admin.-DISC	7880 3C Disc Controller	117,696
52 Department of Admin.-DISC	3480 B22 Tape Drives, 3	138,096
53 Dept. of Admin.-Bldg & Grnd	Building Automation System	229,000
54 Department of Admin.-DISC	Micros, Terminals, Printers	282,600
55 Department of Admin.-DISC	DCP-40-Communications Processor	363,497
56 Dept. of Admin., DISC	Computer Equipment	446,549
57 Dept. of Health and Env.	Key System	24,700
58 Kansas Insurance Department	IBM System Upgrade to Model D26	20,000
59 Kansas State University	Bridge CS-100 (Hardware)	5,000
60 Kansas State University	Processor/Printer	6,000
61 Kansas State University	8 Line Comm Adapter, et al	17,000
62 Kansas State University	IBM 7171 Controller	17,000
63 Kansas State University	Copiers, 3	17,700
64 Kansas State University	IBM-DACU (Hardware)	18,000
65 Kansas State University	NAS 7380-B4 Disk Drive	20,000
66 Kansas State University	Registration Office Work Stations	20,000
67 Kansas State University	Copier	50,000
68 Kansas State University	Computerized Print Info. Mgmt. Sys.	75,000
69 Kansas State University	Truck, Trash	80,000
70 Kansas State University	Processor Upgrade to NAS 6660	200,000
71 Kansas State University	Mobile Buildings	200,000
72 Kansas State University	Software	220,000
73 Emporia State University	Scanner	30,000
74 Emporia State University	Computer Equipment	50,250
75 Emporia State University	Minicomputer, 9373 Mode	74,648
76 Pittsburg State University	VR Copier, 9500	45,350
77 Correctional Industries	System 36 Computer	67,567
78 Kansas Parole Board	Key System	5,000
79 SRS - Hays	PBX	45,000
80 SRS - Wichita	Voice Mail Package	60,000
81 Social Rehab. Services	Telephone Systems	100,000
82 SRS - Parsons	PBX	130,000
83 SRS - Winfield	PBX	130,000
84 Social Rehab. Services	Office Automation System	250,000
85 Social Rehab. Services	Computer System	2,469,000
86 Social Rehab. Services	Computer System	4,402,000
87 Topeka State Hospital	Telephone System	175,000
88 University of Kansas	Sewer Cleaner	16,886
89 University of Kansas	Law Enf. Info. Wd. Proc. Sys.	22,000
90 University of Kansas	Tenoning Machine	23,500
91 University of Kansas	Copier, 9500	26,532
92 University of Kansas	Copier, 9500	27,055
93 University of Kansas	Personnel Lift	28,400
94 University of Kansas	Skid Steer Loader	31,315

State of Kansas
 Estimates by Agencies of Purchases of Equipment
 Using Certificates of Participation, 1987 Issue
 As of December 1, 1987

Agency Name	Description of Equipment	Estimated Cost
95 University of Kansas	Tractor	42,645
96 University of Kansas	25 x 38 Folding Machine	45,000
97 University of Kansas	Signature Collator	50,000
98 University of Kansas	Chemistry Equipment Items	80,000
99 University of Kansas	Assembler/Disassemblers	103,950
100 University of Kansas	Chemistry Equipment Items	200,000
101 University of Kansas	Computer Network (Engineering)	300,000
102 Univ. of Kansas Med. Center	100 Lightpins	19,000
103 Univ. of Kansas Med. Center	Focus and Focus SQL/05 Software	46,000
104 Univ. of Kansas Med. Center	NCR Comten 5620 Comm. Processor	51,408
105 Univ. of Kansas Med. Center	CRT, Telex	350,000
106 Wichita State University	Postal Equipment	30,000
107 Wichita State University	VR Copier, 9500	47,861
Total Estimated Purchases		14,247,520

1.6M is refinancing

MEMORANDUM

Kansas Legislative Research Department

December 30, 1987

Hearings by the Joint Standing Committees on Senate Ways
and Means and House Appropriations Concerning Certificates
of Participation and Equipment Acquisition by State Agencies
-- December 14, 1987

At its November meeting, the Legislative Coordinating Council authorized the Senate Committee on Ways and Means and the House Appropriations Committee to hold a joint meeting to conduct hearings on the issue of Certificates of Participation and the acquisition of equipment by state agencies. The Committees met jointly on December 14, 1987 to hear testimony from the Department of Administration and the Kansas Development Finance Authority. Three Senate members and 13 House members attended all or part of the meeting. This report will present a summary of the issues presented to the Committees and the conclusions reached by the Committees.

Equipment Acquisition by State Agencies

The Secretary of Administration, in his presentation to the Joint Committee, noted that the State of Kansas makes a substantial investment in capital outlay for equipment each year, and that, according to data compiled by his Department, \$12,459,525 will be spent in FY 1988 for installment purchase payments by state agencies. In order to exercise oversight on the use of installment purchases, the Secretary of Administration suggested the following four guidelines for consideration:

1. Nature of Purchase. Installment purchases should be restricted to the purchase of capital equipment and services directly related to such procurement. No supplies, consumables, or service contracts should be purchased through installments.
2. Length of Installment Purchase Agreements. Installment purchase agreement terms should not exceed the useful economic life of the equipment being purchased. The Director of Purchases should develop useful economic-life parameters for use in all capital equipment acquisitions with the exception of data processing equipment, whose useful economic-life parameters should be determined by the Director of Information Systems and Communications.
3. Minimum Amount Per Procurement. Agencies should limit their use of installment purchase agreements to equipment procurement projects of \$15,000 or more. Agencies with a procurement of less than \$15,000 should make such purchases outright.
4. Certification of Budget. In compliance with instructions from the Division of the Budget regarding the completion of budget submissions, each agency head should insure that all anticipated

Attach 7

equipment procurements for the coming fiscal year are identified in the agency's annual budget as to outright purchase or installment purchase. State agencies requesting procurement of equipment on installment purchase should certify to the Director of Purchases that the equipment was not originally included in the agency's budget as an approved outright purchase by the Legislature.

The Secretary also stated that the Department of Administration will monitor the level of installment purchase payments as a percentage of the state's total capital outlay expenditures each fiscal year, in order to assess agency use of installment purchases. The Department of Administration will continue to pool agency equipment needs in order to provide funds at lower rates, where sensible, in making installment purchase procurements through the Certificate of Participation program.

Certificates of Participation (COP) and Installment Purchases

The Chief Attorney for the Department of Administration presented a review of the procedures and statutes relating to installment purchases of equipment by state agencies. It was noted that equipment purchases by state agencies may be financed through (1) a vendor, (2) a third-party leasing company, or (3) the Certificate of Participation program; however, each of these three methods constitutes an installment purchase procurement. When a vendor quotes an installment purchase price in a bid, the bid reflects the vendor's cost of obtaining financing.

Under the Certificate of Participation program, the state arranges the financing, separate and apart from the procurement of the equipment. In effect, equipment acquired through the COP program is an outright purchase from the vendor by the state agency involved. The agency then makes its payments to the Department of Administration to retire the Certificates. It was stated that past data indicate that COP financing usually results in lower interest expense for state agencies and will generally save the agencies between two and seven percentage points in interest rates. It was stated that, as an example, a \$1.66 million refinancing through the COP program resulted in a reduction of \$190,000 in interest expense. It was noted that the COP program is merely a lower cost method of providing installment purchase financing.


The Chief Attorney also presented data on state agency installment purchase obligations. These data indicate that, for FY 1988, state agency installment purchase obligations total \$12,459,525. This total amount for FY 1988 of \$12,459,525 is made up of three components: \$7,291,095 financed through the 1986 COP; \$4,160,091 financed by vendors or third-party leasing arrangements; and \$1,008,339 financed through the 1987 COP. The total FY 1988 obligation is attributed to the following state agencies: Board of Regents agencies, 41.0 percent; Department of Administration, DISC, 24.0 percent; Telecommunications equipment, 27.0 percent; and all other agencies, 8.0 percent. The current state obligation for installment purchases of equipment for the period FY 1988 through FY 1998 totals \$72,593,725.

The President of the Kansas Development Finance Authority reviewed the procedures and practices involved in issuing Certificates of Participation. The statute authorizes the Authority to issue COPs for activities and projects of state agencies, as requested by the Secretary of Administration. Such issuance must be approved by either the State Finance Council or by act of the Legislature. It was stated that the Authority works closely with the Department of Administration and with the Pooled Money Investment Board in administering the new statutes. In April of 1987, the Department of Administration solicited state agencies to determine which equipment acquisitions the agencies desired to be included in the 1987 Certificate. The Certificate was issued in December, 1987 in the amount of \$16,350,000. The President discussed the actual mechanics of issuing a Certificate, as well as the tax status of COPs and the Authority's role in the procedure.


Conclusions

The following observations and conclusions are made for the consideration of the two Standing Committees during the 1988 Session:

1. The Committee approves the four guidelines suggested by the Secretary of Administration with regard to equipment acquisition by state agencies, and, further, the Committee recommends that these guidelines be applied to all state agencies, including the Regents' institutions.
2. The Committee concludes that installment purchase for the acquisition of equipment by state agencies is an effective method of providing funds for equipment acquisition, and should be the method used whenever such procurement is advantageous to the state.
3. The Committee concludes that Certificate of Participation financing should be used for all equipment which is to be purchased over a period of years, when COP financing is cheaper than other installment purchase methods.
4. The Committee recommends that proposed issuances of Certificates of Participation be submitted by the Department of Administration to the Legislature for review and approval. (Under current law and practice, the issuance of Certificates of Participation requires the approval of the State Finance Council.)
5. The Committee recommends that state agencies identify, in their annual budget requests, all proposed equipment acquisitions and the proposed method of financing those acquisitions, i.e., outright purchase, lease purchase, rental, or COP financing. The Committee understands that leasing and rental of equipment by state agencies will be needed in some instances; however, the Committee recommends that equipment leasing or rental by state agencies be discouraged.



Senator August Bogina, Chairman
Senate Committee on Ways and Means



Representative Bill Bunten, Chairman
House Appropriations Committee