START\_STATUTE41-5703.  School facilities oversight board lease‑to‑own; fund; expiration

A.  In order to fulfill the requirements of section 41‑5741, the board may acquire school facilities for the use of one or more school districts by entering into one or more lease‑to‑own transactions in accordance with this section.  For the purposes of this section, providing school facilities includes land acquisition, related infrastructure, fixtures, furnishings, equipment and costs of the lease‑to‑own transaction.  The board may provide monies to provide school facilities in part pursuant to section 41‑5741 and in part through a lease‑to‑own transaction.

B.  A lease‑to‑own transaction may provide for:

1.  The ground lease of the land for the facilities to a private entity for the term of the lease‑to‑own transaction or for a term of up to one and one‑half times the term of the lease‑to‑own transaction, subject to earlier termination on completion of performance of the lease‑to‑own agreement.  The ground lessor may either be the school district or the board, whichever holds title to the land.

2.  The lease of the completed school facilities by a private entity to the board for an extended term of years pursuant to a lease‑to‑own agreement.

3.  The sublease of the completed school facilities by the board to the school district during the term of the lease‑to‑own agreement.  The sublease shall provide for the use, maintenance and operation of the school facilities by the school district and for the transfer of ownership of the school facilities to the school district on completion of performance of the lease‑to‑own agreement.

4.  The option for the board's purchase of the school facilities and transfer of ownership of the school facilities to the school district before the expiration of the lease‑to‑own agreement.

5.  The services of trustees, financial advisors, paying agents, transfer agents, underwriters, lawyers and other professional service providers, credit enhancements or liquidity facilities and all other services considered necessary by the board in connection with the lease‑to‑own transaction, and related agreements and arrangements including arrangements for the creation and sale of certificates of participation evidencing proportionate interests in the lease payments to be made by the board pursuant to the lease‑to‑own agreement.

C.  The sublease of the school facilities to the school district is subject to this section and to the provisions of the lease‑to‑own agreement.  Neither a ground lease by the school district as lessor nor a sublease of the school facilities to the school district is required to be authorized by a vote of the school district electors. A ground lease is not subject to any limitations or requirements applicable to leases or lease‑purchase agreements pursuant to section 15‑342 or any other section of title 15 or this chapter.

D.  Any school facility that is constructed through a lease‑to‑own agreement shall meet the minimum building adequacy standards set forth in section 41‑5711.

E.  School districts may use local monies to exceed the minimum adequacy standards and to build athletic fields and any other capital project for leased‑to‑own facilities.

F.  The board shall include any square footage of new school facilities constructed through lease‑to‑own agreements in the computations prescribed in section 41‑5711.

G.  The lease‑to‑own fund is established consisting of monies appropriated by the legislature.  The board shall administer the fund and distribute monies in the fund to make payments pursuant to lease‑to‑own agreements entered into by the board pursuant to this section, to make payments to or for the benefit of school districts pursuant to local lease‑to‑own agreements entered into by school districts pursuant to section 41‑5704 and to pay costs considered necessary by the board in connection with lease‑to‑own transactions and local lease‑to‑own transactions.  Payments by the board pursuant to a lease‑to‑own agreement or local lease‑to‑own agreement shall be made only from the lease‑to‑own fund.  On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35‑313, and monies earned from investment shall be credited to the lease‑to‑own fund.

H.  A lease‑to‑own agreement entered into by the board pursuant to this section shall provide that:

1.  At the completion of the lease‑to‑own agreement, ownership of the school facilities and land associated with the lease‑to‑own agreement shall be transferred to the school district as specified in the agreement.

2.  The obligation of the board to make any payment under the lease‑to‑own agreement is a current expense, payable exclusively from appropriated monies, and is not a general obligation indebtedness of this state or the board.  The obligation of a school district to make expenditures under a sublease pursuant to subsection B, paragraph 3 of this section is a current expense, payable exclusively from budgeted monies, and is not a general obligation indebtedness of the school district.

3.  If the legislature fails to appropriate monies or the board fails to allocate such monies for any periodic payment or renewal term of the lease‑to‑own agreement, the lease‑to‑own agreement terminates at the end of the current term and this state and the board are relieved of any subsequent obligation under the agreement and the school district is relieved of any subsequent obligation under the sublease.

4.  The lease‑to‑own agreement shall be reviewed and approved by the attorney general before the agreement may take effect.

5.  Before the agreement takes effect and after review by the attorney general, the project or projects related to the agreement shall be submitted for review by the joint committee on capital review.

I.  The board may covenant to use its best efforts to budget, obtain, allocate and maintain sufficient appropriated monies to make payments under a lease‑to‑own agreement, but the lease‑to‑own agreement shall acknowledge that appropriating state monies is a legislative act and is beyond the control of the board or of any other party to the lease‑to‑own agreement.

J.  The land and the school facilities on the land are exempt from taxation during the term of the lease‑to‑own agreement and during construction and subsequent occupancy by the school district pursuant to the sublease.

K.  The powers prescribed in this section are in addition to the powers conferred by any other law.  Without reference to any other provision of title 15, this chapter or any other law, this section is authority for the completion of the purposes prescribed in this section for the board to provide school facilities for use by school districts through lease‑to‑own transactions pursuant to this section without regard to the procedure required by any other law. Except as otherwise provided in this section, the provisions of title 15 and this chapter that relate to the matters contained in this section are superseded because this section is the exclusive law on these matters.

L.  The board shall not enter into lease‑to‑own transactions, including any refinancings or refundings, pursuant to this section from and after May 15, 2006. END\_STATUTE