

AGENDA

COMMITTEE ON FINANCE

Meeting: 1:15 p.m., Tuesday, January 26, 1999
Auditorium

Anthony M. Vitti, Vice Chair
William D. Campbell
Martha C. Fallgatter
Harold Goldwhite
Laurence K. Gould, Jr.
Eric C. Mitchell
Joan Otomo-Corgel
Frederick W. Pierce, IV
Ali C. Razi
Michael D. Stennis
Stanley T. Wang

Consent Items

Approval of Minutes of Meeting of November 10, 1998

Discussion Items

1. Status Report on the 1999/2000 Budget, *Information*
2. Proposed Revision of Title 5 Regulations—Functions of Auxiliary Organizations, *Action*

**MINUTES OF MEETING OF
COMMITTEE ON FINANCE**

**Trustees of The California State University
Glenn S. Dumke Conference Center
400 Golden Shore
Long Beach, California**

November 10, 1998

Members Present

James H. Gray, Chair
William D. Campbell
Jim Considine
Martha C. Fallgatter
Harold Goldwhite
Laurence K. Gould, Jr.
William Hauck, Chairman of the Board, ex officio
Eric C. Mitchell
Maridel Moulton
Joan Otomo-Corgel
Ali C. Razi
Charles B. Reed, Chancellor, ex officio
Michael D. Stennis
Stanley T. Wang

Members Absent

Anthony M. Vitti, Vice Chair

Other Trustees Present

Ralph R. Pesqueira
Alice S. Petrossian

Chancellor's Office Staff

David S. Spence, Executive Vice Chancellor
Richard P. West, Senior Vice Chancellor, Business and Finance
Douglas X. Patiño, Vice Chancellor, University Advancement
Christine Helwick, General Counsel
Samuel A. Strafaci, Interim Senior Director, Human Resources

Presidential Liaisons

Ruben Armiñana, President, Sonoma State University, present
Albert K. Karnig, President, California State University, San Bernardino, present

Chair Gray called the meeting to order at 1:15 p.m.

The minutes of September 15, 1998, were approved.

Annual Student Fee Report

Chair Gray asked Mr. Richard P. West, senior vice chancellor, business and finance, to present the item. Senior Vice Chancellor West presented the annual report which details the comparison of student fees between the CSU and its comparison institutions. The current report reflects the CSU as the least expensive among our comparison institutions. While comparable institutions increased fees by an average of 4 percent for 1998/99, the CSU lowered its university fee by 5 percent.

Senior Vice Chancellor West briefly reviewed the contents of the report and concluded by saying he was pleased with the results of the final report and confident that it reflected a comprehensive overview of our fee picture, as well as consistency with established trustee policy.

Delineating and Consolidating CSU Policy for Financing Activities and a Related Notice of Intent to Change Title 5, California Code of Regulations

Senior Vice Chancellor West explained the purpose of the item was to simplify the approval processes for financing programs that are currently used in the CSU and to provide public notice of a proposed update to Title 5 of the California Code of Regulations.

The proposed policy contained in the resolution is designed to accomplish the following: create a reasoned approach to establishing the appropriate level of decision making concerning financing transactions in the CSU; to streamline the processing of approvals saving time for the trustees; to bring all of the financing issue delegations together in one place; and to delegate to the chancellor certain approvals previously exercised by the board.

Senior Vice Chancellor West then introduced a slide overview and explanation of the various kinds of debt incurred by the CSU.

Mr. Fred Pierce, alumni trustee-elect, expressed his concern regarding how the new policy might potentially affect the board from a liability standpoint. Ms. Christine Helwick, general counsel, replied that they have looked carefully at that question and were satisfied that simply bringing the items to the board for information purposes only would not enhance any liability exposure to the board.

Trustee Razi inquired about the shortage of student housing and whether methods had been explored to take advantage of various related tax credit programs as well as other ways to assist campuses in deferring the cost of additional student housing. Senior Vice Chancellor West said we are examining a few proposals that would involve the auxiliaries, but agreed that we need to take a closer look. Trustee Razi emphasized that we should look at tax credit programs in addition to tax-exempt avenues. Chancellor Reed suggested that Trustee Razi's inquiry should be further examined and brought back to the board for discussion at a subsequent meeting.

The committee recommended approval of the proposed resolution (RFIN 11-98-18).

Authorize the Issuance and Sale of the San Diego State University Parking System Revenue Bonds, Series A, and Related Matters

Senior Vice Chancellor West said the purpose of the item was to authorize the sale of San Diego State University Parking System Revenue Bonds, Series A, in an amount not to exceed \$13, 775,000

in order to finance the construction of a multi-level parking structure on the San Diego campus. Senior Vice Chancellor West noted that trustee approval had previously been obtained for construction of the structure, and that approval of the proposed resolution was the final step in implementing the project. He said the project was well within the necessary bond requirements and recommended approval of the resolution.

The committee recommended approval of the proposed resolution (RFIN 11-98-19).

Private Sector Participation in the Development of The Village at Centennial Square at San Francisco State University

Senior Vice Chancellor West prefaced that this was one of several private/public partnerships to be presented at this meeting. He said all of the proposals are in their conceptual stages and will be brought back to the board with details at a later date.

San Francisco State University is proposing to enter into a public/private partnership for construction of The Village at Centennial Square. The project would include on-campus apartments, a student services building, and off-street parking. The project would provide housing for an estimated 763 students and consolidate all student services offices in one location.

Senior Vice Chancellor West commented that the proposed project effectively ties together several items at the campus in need of resolution. In particular, it would allow for the demolition of Verducci Hall, which was severely damaged in the Loma Prieta earthquake, and allow for replacement of student housing lost in that event.

Chair Gray said this is exactly the kind of project we might want to look at in regard to Trustee Razi's earlier inquiry. He noted this project could provide significant tax credit for potential developers and encouraged the committee to look into this possibility. Based on comments from the report, Trustee Gould asked if there was a greater need for student housing than what was currently being requested. Dr. Robert A. Corrigan, president, San Francisco State University, replied that there was a greater need; however, this project would significantly assist in reducing the shortage. Trustee Wang asked if there had been any contact with developers to date. President Corrigan said they have gone out with an RFQ and have received expressions of interest from five viable potential partners.

The San Francisco proposal requests approval of a concept plan for the public/private partnership venture and to authorize the project to proceed with the understanding that additional information will be presented to the board at key points in the process.

The committee recommended approval of the proposed resolution (RFIN 11-98-20).

Approval of an Auxiliary Organization Tax-Exempt Financing at San Jose State University

Senior Vice Chancellor West explained that this project has been identified on the campus for some time. There was originally a fee for this facility and it is now ready to go to bid and to initiate construction. He noted this was simply a case where the item is brought to the board for tax-exempt approval. Repayment of the debt is guaranteed by auxiliary revenue.

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The committee recommended approval of the proposed resolution (RFIN 11-98-21).

Private Sector Participation in the Development of a Marine Environmental Resources Building at California Maritime Academy

Senior Vice Chancellor West reviewed the proposal which calls for private sector participation to design, finance, construct, and operate an environmental resources structure on the California Maritime Academy grounds. The proposed facility will provide leased space for offices and other needs for the U.S. Coast Guard, Department of Fish and Game, and other related entities. The structure would bring together organizations with common missions and provide opportunities to maximize resources and minimize costs. In keeping with the mission and educational purposes of the academy, the structure would serve to emphasize the environmental concerns of waterways by higher education, and serve to establish the academy as an educational resource within Solano County and with agencies that will conduct business activities in the proposed facility.

Trustee Gould expressed his desire to assure that long-term commitments are received from prospective tenants prior to commencing the project. Senior Vice Chancellor West assured Trustee Gould that we will make sure those commitments are received prior to consummation of any partnership deal.

The committee recommended approval of the proposed resolution (RFIN 11-98-22).

Private Sector Participation in the Development of a 150-Acre Vineyard at California Polytechnic State University, San Luis Obispo

Senior Vice Chancellor West outlined the proposal for private sector participation in the development of a 150-acre vineyard at California Polytechnic State University, San Luis Obispo. The project would provide an educational facility that will replicate industry standards and offer students practical knowledge and realistic experience for preparation in entering the wine industry workforce.

Trustee Stennis inquired if the partner would be leasing the land from the university. Dr. Warren J. Baker, president, California Polytechnic State University, San Luis Obispo, replied that the plan was to lease the land to the campus foundation and then develop a license agreement with the corporation.

Trustee Campbell asked who the partner was. President Baker said they are in preliminary discussions with the E & J Gallo Company but do not have a formal negotiated agreement at this time.

The committee recommended approval of the proposed resolution (RFIN 11-98-23).

Adjournment

The meeting adjourned at 1:58 p.m.

BRIEF

Information Item

Agenda Item 1
January 26-27, 1999

COMMITTEE ON FINANCE

Status Report on the 1999/2000 Budget

Presentation By

Richard P. West, Senior Vice Chancellor
Business and Finance

Summary

The 1999/2000 Governor's Budget is scheduled for release in the second week of January. A summary status report on the 1999/2000 Governor's Budget will be presented, including a status report comparing the Board of Trustees' budget request with that of the Governor's Budget. Additional items of interest to the board regarding the 1999/2000 budget may also be discussed.

BRIEF

Action Item

Agenda Item 2
January 26-27, 1999

COMMITTEE ON FINANCE

Proposed Revision of Title 5 Regulations — Functions of Auxiliary Organizations

Presentation By

Richard P. West, Senior Vice Chancellor
Business and Finance

Summary

At the November 1998 meeting of the Board of Trustees, the Trustees approved a consolidated financing policy. This item requests the Board of Trustees to take final action on implementing a Title 5 change needed to conform Title 5 to the policy action taken at the November meeting.

Title 5 currently restricts auxiliary organizations from entering into any contract or other business arrangement involving real property without prior approval of the campus president and without prior notification and consultation with the Office of the Chancellor. This restriction would be deleted and language added to subdivision (c) of Section 42500 to express the authority of auxiliaries to issue debt instruments to finance or refinance projects pursuant to policies of the Board of Trustees and delegations made to the Chancellor by the Board of Trustees.

Recommended Action

Approval of the resolution.

ITEM

2

Agenda Item 2
January 26-27, 1999

COMMITTEE ON FINANCE

Proposed Revision of Title 5 Regulations—Functions of Auxiliary Organizations

Background

At the November 1998 meeting of the Board of Trustees, the Trustees approved a consolidated financing policy (Exhibit A contains the approved item). The new policy addressed aspects of the financing programs now used in the CSU. It established certain new financing policies and reaffirmed specific existing financing policies. Part of the effort in establishing that policy included a notice to update Title 5, Section 42500 (c) to clarify intent of the Board regarding financing activities of auxiliary organizations. This item requests final action of the Board of Trustees on the recommended change in Title 5.

Discussion

Title 5 currently restricts auxiliary organizations from entering into any contract or other business arrangement involving real property without prior approval of the campus president and without prior notification and consultation with the Office of the Chancellor. This restriction would be deleted and language added to subdivision (c) of Section 42500 to express the authority of auxiliaries to issue debt instruments to finance or refinance projects pursuant to policies of the Board of Trustees and delegations made to the Chancellor by the Board of Trustees.

Reasons for the change

Over the years it has been found that the current Title 5 section does not adequately target the area of concern of the Trustees with regard to auxiliary organization activity. The current section causes delays in transactions that are adequately reviewed at the campus level and contain no major system implications that would normally be within the purview of the Chancellor and Trustees. For example, each year many auxiliary organizations involved in philanthropic activity receive gifts of real property or otherwise dispose of previously gifted real property in accordance with specific gift provisions. These transactions are fully evaluated by the respective auxiliary organization under the overall supervision of the campus president. Risks associated with these types of transactions are limited. Removal of this requirement will streamline review and approval of such transactions.

The Trustees and the Chancellor more properly need to be aware of transactions that involve financing risk or the issuance of long-term debt instruments by auxiliary organizations. Currently the Trustees have no Title 5 section that adequately states that auxiliary organizations debt issuance must be tied to the academic mission, is to be approved by the campus president and is subject to policies of the Board of Trustees. This section provides that structure and assures that the focus of the Trustees is targeted to those transactions (including real property transactions) that involve financing risk.

Currently there is no requirement that the Trustees receive information on new long-term debt issued by auxiliary organizations. The proposed Title 5 change allows policies to be implemented which assure that the Trustees receive such information. The changes also allow for streamlining and operational efficiencies through appropriate delegations approved in the Trustees' financing policies.

Proposed Resolution

The following resolution is recommended for adoption:

RESOLVED, By the Board of Trustees of the California State University, acting under the authority prescribed herein and pursuant to Section 89030.1 of the Education Code, that the board hereby amends its regulations in Article 2 of Subchapter 6, Chapter 1, Division 5 of Title 5 of the California Code of Regulations, as follows:

§42500. Function of Auxiliary Organization.

Auxiliary organizations are formed to provide essential functions which are an integral part of the education mission of a campus and the California State University.

(a) The following functions have been determined by the Board to be appropriate for auxiliary organizations to perform in accordance with applicable policies, rules, and regulations:

- (1) Student Body Organization Programs;
- (2) Bookstores, Food Services, and Campus Services;
- (3) Housing;
- (4) Student Union Programs;
- (5) Supplementary Health Services;
- (6) Loans, Scholarships, Grants-in-Aids, Stipends, and Related Financial Assistance;
- (7) Externally Funded Projects including Research, Workshops, Conferences, and Institutes;
- (8) Instructionally-related Programs; and activities, including Agriculture, Athletics, Radio and Television Stations, Newspapers, Films, Transportation, Printing, and other Instructionally Related Programs and Activities;
- (9) Alumni Programs;
- (10) Gifts, bequests, devises, endowments, trusts, and similar funds;
- (11) Public relations, fundraising, fund management, and similar development programs;
- (12) Acquisition, development, sale, and transfer of real and personal property including financing transactions related to these activities.

(b) Gifts, grants, or other donations received by an auxiliary organization shall be accepted, maintained, and used in accordance with the policies, rules, and regulations of the Board of Trustees.

(c) Auxiliary organizations may ~~not enter into any contract or other business arrangement involving real property, without prior approval of the campus president, and without prior notification and consultation with the Office of the Chancellor.~~ issue debt instruments to finance or refinance projects in connection with their mission upon prior approval of the campus president and pursuant to policies of the Board of Trustees as may be implemented by the Chancellor. For purposes of this section, "debt instruments" means loans, notes, bonds, finance leases, installment purchase or sale agreements, and certificates of participation.

(d) Student loans, scholarships, stipends and grants-in-aid shall only be given to currently admitted students. A record of such financial assistance shall be forwarded on a timely basis to the campus financial aid office and shall be documented on student financial aid recipient records kept in that office. All such financial assistance provided from student body organization funds shall be approved by the campus financial aid office before such funds are expended, and shall not exceed amounts to be provided under Regulations of federal and state financial aid programs, except as provided under section 42403, subdivision (b).

(e) An auxiliary organization shall not engage in a function not listed in subdivision (a) of this section unless an appropriate amendment is made to subdivision (a) by the Board of Trustees, adding said functions of auxiliary organizations, or unless such function is essential to satisfy the corporation laws of the State of California.

Note: Authority cited: Sections 89030 and 89900, Education Code. Reference: Section 89900, Education Code.

RESOLVED, That the Board of Trustees has determined that the adoption of the proposed revisions will not impose a cost or savings on any state agency; will not impose a cost or savings on any local agency or school district that is required to be reimbursed under Section 17561 of the Government Code; will not result in any cost or savings in federal funding to the state; and will not impose a mandate on local agencies or school districts;

and, be it further

RESOLVED, That the Board of Trustees delegates to the chancellor of The California State University authority to further adopt, amend, or repeal these revisions if the further adoption, amendment, or repeal is required and is nonsubstantial or solely grammatical in nature, or sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

**Agenda Item – Approved Financing Policy
November 11, 1998
RFIN 11-98-18**

BRIEF

COMMITTEE ON FINANCE

Delineating and Consolidating CSU Policy for Financing Activities and a Related Notice of Intent to Change Title 5, California Code of Regulations

Presentation By

Richard P. West, Senior Vice Chancellor
Business and Finance

Summary

This item provides an overview of approval processes for the financing programs that are currently used in the CSU. It requests the trustees to take action to approve a singular financing policy statement that would make appropriate delegations to the chancellor resulting in a more efficient and streamlined trustee approval processes, and to reaffirm certain current approval processes. In addition the item would provide public notice for a needed update to Section 42500 (d), Title 5, the California Code of Regulations.

Recommended Action

Approval of the resolution is recommended.

ITEM

2
Agenda Item 2
November 10-11, 1998

COMMITTEE ON FINANCE

Delineating and Consolidating CSU Policy for Financing Activities and a Related Notice of Intent to Change Title 5, California Code of Regulations

Background

The CSU has utilized several different financing programs to provide many of the physical resources needed to accomplish its mission. Historically the trustees have either approved project financing transactions for various CSU or state/CSU financing programs, or taken action intended to enable some auxiliary organization financings to be qualified as tax-exempt under certain IRS regulations. In many instances, the need to come to the board has been driven by a variety of ministerial tax law requirements. Furthermore, because of the lack of specific policy, a few large auxiliary organization financings have not been subject to direct trustee review.

Because the financing methods available to the trustees have grown over the years and their use continues to play a vital role in the CSU's ability to meet its educational mission, it is felt that a more comprehensive and deliberate review of these programs should be made by the trustees and all related policies of the trustees be brought together in a single policy statement. Some of the concepts proposed in this item are not new and are in place through previous isolated actions of the trustees taken on specific programs or for specific circumstances. In other instances, it is felt that there are several ministerial or routine actions of the trustees that could be efficiently delegated.

This item brings all of the financing decision and approval concepts together in one policy statement. The proposed policy offers a more streamlined approach to handling the financing business of the CSU. It proposes that the trustees review and reaffirm certain levels of financing delegation. Where appropriate for efficiency and streamlining, it proposes that the trustees make new delegations to the chancellor. The proposal also contains delegations to appropriate staff such as the executive vice chancellor, the senior vice chancellor for business and finance, and the director of financing and risk management to assist with expediting the financing processes. A needed change to Title 5, California Code of Regulations to clarify existing practice and lay the appropriate foundation for these actions is also presented for information as part of the plan. If the recommended actions are adopted, the chancellor would issue specific policy directives to campus presidents to clarify campus level responsibility.

Our bond counsel, Orrick, Herrington & Sutcliffe LLP, has reviewed these proposals and has provided suggestions which have been incorporated. The law firm supports the concepts presented here and understands the need to delegate and streamline some of the approval process.

The following sections describe each major financing program or issue, and the proposed action (if any) that will result in a comprehensive policy framework for financing activity in the CSU. The specific policy being proposed related to each of these sections is contained in the resolution.

General Obligation Bond Financings

To date each general obligation bond act providing funds for the CSU contains a provision making the chancellor the representative of the trustees on the respective Higher Education Finance Committee from the California State University. This committee authorizes the actions for the issuance of such general obligation bonds. Therefore no additional action is needed by the trustees to implement the general obligation bond funded projects approved through the budget process.

State Public Works Board Financings

The ultimate administrative responsibility for financings under the state public works board bond program lies with the Department of Finance and the State Treasurer's Office. However, at various times, and depending on what type of interim financing is selected by the State Treasurer, the trustees have been asked to approve the receipt of pooled money investment board interim loans; the execution of site, facility and equipment leases; the construction agreements; to assist in the preparation of the official statement; and to otherwise furnish and assist in providing documents or information to construct, finance and refinance projects approved for the CSU in any state budget act.

Because every project in this program is reviewed and approved by the trustees in the annual Five-Year Capital Improvement Program of the California State University, the trustees previously

concluded that a continuous delegation to the chancellor and appropriate staff to review, execute and deliver any and all documents necessary to implement the planned financing is appropriate. The delegation is currently authorized in RFIN 01-94-01. It is now proposed that in order to consolidate like policies, the concept of the delegation be reaffirmed as part of the proposed resolution which is intended to establish a more all-encompassing CSU Policy for Financing Activities.

State Equipment Acquisition Financings

California Education Code Section 89036 authorizes the CSU Board of Trustees to enter into agreements for the furnishing of services, facilities, materials, or equipment. In addition, Section 10295 of the Public Contract Code permits the trustees to enter into these agreements without the approval of the State Department of General Services. This authority is currently delegated to the chancellor under Section 4 of Chapter III of the Trustees' Standing Orders. In turn, the chancellor has delegated authority to each campus president or designee to acquire personal property and services consistent with applicable provisions of The California State University Manual for Contracting and Procurement. This includes the ability to enter into multi-year lease-purchase arrangements for the acquisition of equipment. Currently, the Chancellor's Office provides consultation and assistance to campuses, and reviews and approves all personal property leases involving tax-exempt financed acquisitions. No changes to the current policy are recommended in this item.

California State University Bond Act of 1947—Dormitory Revenue Fund Financings

The ultimate responsibility for financing under the California State University Bond Act of 1947 (the bond act) lies with the Board of Trustees. The bond act specifically requires the Board of Trustees to authorize issuing new bonds for appropriate revenue producing projects consisting of student housing, student unions, parking facilities, and health center facilities under the auxiliary facilities category. At the present time, all new issues including refinancing bond sales come to the Board of Trustees for review and approval. The board takes a specific action for each one.

While the board may continue to review every transaction, streamlining the process may be something that is warranted in refinancing transactions. In many instances, it would be advantageous for the staff to move rapidly to be able to take advantage of favorable interest rates to produce the largest savings in refinancing transactions. Currently, with the two-month trustee approval cycle, it could take as long as twelve weeks between the time rates become favorable enough to make a refinancing cost effective and the time it takes to bring the issue to market.

The State Treasurer's Office normally requires a net present value savings of 3 percent on any refinancings. Since the CSU is required to use the State Treasurer as the agent for sale on all refinancings, we are required to meet this test as a matter of practice.

Therefore, in order to provide a less onerous process for the trustees and to expedite the refinancing process, the proposed new policy contained in the resolution includes provisions that authorize the chancellor to approve refinancing of bonds issued pursuant to the Bond Act of 1947 when savings can be achieved as determined by the chancellor. Section 2.1 applies to this issue.

Auxiliary Organization Financings

The Education Code and Title 5, California Code of Regulations in part consist of provisions that make it clear the trustees, the chancellor and campus presidents have overall responsibility for the activities that occur in the CSU, including the activities of auxiliary organizations. Auxiliary organizations are required to adhere to applicable CSU policy, directives of the chancellor and policy of the respective campuses as articulated by the campus president. In addition, auxiliary organizations must maintain a good standing status by complying with a set of specific statutory and trustee requirements also contained within these laws.

However, the intent of the legislature in creating provisions for establishing auxiliary organizations clearly encompasses the concept that the trustees should not have responsibility for the liabilities of auxiliary organizations. This was a primary driving force in developing the auxiliary organization concept. Thus it is important to avoid actions that would infer assumption of liability for financing transactions of auxiliary organizations.

The Internal Revenue Code permits tax-exempt financings by certain nonprofit organizations for state and local government units, but only if the governing board of the governmental unit makes certain statements about the financing and the relationship of the nonprofit organization. The tax code does not require the governing board to take financial responsibility for repayment of the debt. Therefore, carefully worded resolutions have frequently been brought before the trustees to assist in qualifying auxiliary organization transactions as tax-exempt, and are crafted in such a way that makes it clear that the trustees are not accepting legal responsibility to repay the debt merely by approving the transaction. Experience has shown that campuses either do not have or do not always obtain tax/legal advice and direction needed to deal with the complexities of this tax law. Therefore, where action by the trustees is required, the application of tax law must be applied on a consistent basis by competent legal counsel. Some systemwide oversight in this area seems appropriate and is therefore incorporated in this draft policy.

In some instances auxiliary organizations have completed large tax-exempt financings and refinancings using the tax-exempt organization status of other entities such as city redevelopment agencies or joint powers agencies. In those instances, there is no current requirement for the trustees to review the transaction and so these have been accomplished without trustee review or oversight. A more rational policy would be to have large, long-term transactions reviewed by the trustees, and a review for smaller ones delegated to the chancellor and/or campus presidents.

Section 42500 of Title 5 requires auxiliary organizations to notify and consult with the chancellor on real property transactions. This outdated section goes back to a specific real estate acquisition incident in an era when auxiliary financing transactions were rare. This section should be modified to focus the review on borrowings, finance leases and installment purchases and their associated

risks rather than focusing on a specific type of transaction, namely those involving real estate. Therefore, a proposed revision to Title 5 as part of the comprehensive policy change is contained as information in Exhibit A. This would enable the trustees to establish additional policies as necessary. Action on the Title 5 change will be scheduled for the January 1999 meeting of the trustees.

To incorporate the concepts proposed above, to create a uniform and streamlined policy and to retain a process consistent with the intent of the statutory provisions for auxiliary organizations, the trustees are being asked to consider the following actions related to auxiliary organizations:

- Begin the process to change Title 5, California Code of Regulations, Section 42500 (d) to restate and clarify the existing practice of auxiliaries issuing debt instruments pursuant to policies of the trustees, authorize the issuance of any additional needed procedures by the chancellor to implement financing policies, and require the review and approval of the campus presidents for such transactions.
- Require that auxiliary organization financing transactions be reviewed by the trustees, with an exception so that smaller, shorter term equipment financings are reviewed at the campus level.
- Provide the chancellor and designated representatives with authority to take the necessary actions on behalf of the trustees to assist auxiliary organizations with financing transactions. The delegation would include assistance to comply with the tax law requirements for tax-exempt transactions. However, apart from the exception for shorter term equipment financings as more fully explained in the next paragraph, action would only be taken by the chancellor and other officers after the transaction has been presented to the trustees at a regular meeting. The chancellor or designated representatives would also only exercise the delegation on a proposed transaction after a satisfactory staff review had been completed, and appropriate legal advice had been obtained.
- For personal property or equipment financings, the chancellor would plan to delegate authority to the campus president to act for him pursuant to his delegation from the trustees. Therefore, an agenda item for such transactions would not be presented to the trustees and each campus president would need to assure that any tax law requirements are met before acting for the chancellor and the trustees where such action is necessary. Refinancing of personal property or equipment would be included in this process.
- For refinancing transactions where (1) the purpose of the refinancing is solely to generate savings, and (2) it can be demonstrated to the chancellor that savings will be achieved, provide the chancellor or designated representatives with authority to take necessary actions on behalf of the trustees for compliance with tax law. The chancellor or designated representatives would only exercise this authority on a proposed transaction after a satisfactory staff review had been completed, and appropriate legal advice had been obtained.

The diagram in Exhibit B shows in flow chart form how the provisions of this policy for auxiliary organization financings would work.

Other Tax Law Requirements for Financing Transactions

As seen in the previous section, to obtain the benefits of tax-exempt financing, the federal tax law sometimes imposes duties, which can be ministerial in nature. A particularly burdensome provision requires that if a tax-exempt issuer pays project expenses prior to the time it issues bonds and wants to recover those costs in the financing, the tax law requires that before any such expenditures are made the governing board must take an action to confirm that it intends to reimburse itself for the expenditure of the up-front funds from bond proceeds. These expenses would sometimes be paid for initial feasibility studies, environmental studies, and necessary preplanning activities and are usually far in advance of the approval for the sale of bonds which generally occurs about the time construction contracts are awarded. Thus the board must take action on the item twice in some instances.

The authority to make this statement solely for tax law compliance is frequently delegated to the chief executive officer. Our bond counsel, Orrick, Herrington & Sutcliffe LLP, has recommended that such a delegation be put in place. The delegation would not commit the trustees to any borrowing or other future action but would merely preserve the trustees' options to reimburse if and when the trustees authorize a borrowing.

Summary

The proposed policy contained in the resolution is designed to create a reasoned approach to establishing the appropriate level of decision making concerning financing transactions in the CSU, to streamline the processing of approvals saving time for the trustees, to bring all of the financing issue delegations together in one place and to delegate to the chancellor certain approvals previously exercised by the board.

The following resolution is recommended for approval.

CSU Policy for Financing Activities

WHEREAS, The Board of Trustees of The California State University (“the Board” or “the Trustees”) finds it appropriate and necessary to use various debt financing programs afforded to it through the methods statutorily established by the legislature, and to use to its advantage those programs available to it through debt financing by recognized auxiliary organizations of the California State University; and

WHEREAS, The Board wishes to establish and maintain policies that provide a framework for the approval of financing transactions for the various programs that enable appropriate oversight and approval by the Trustees; and

WHEREAS, Within a policy framework the Board desires to establish appropriate delegations that enable the efficient and timely execution of financing transactions for the CSU and its recognized auxiliary organizations in good standing; and

WHEREAS, The Board recognizes that there is a need from time to time to take advantage of rapidly changing market conditions by implementing refinancings that will lower the cost of debt financing for the CSU and its auxiliary organizations and that such refinancings could be better implemented by reducing the time required to authorize such refinancings; and

WHEREAS, The Board finds it appropriate and necessary to review significant auxiliary organization financing transactions; and

WHEREAS, There are certain aspects of the tax law for the reimbursement of up front expenses from tax-exempt financing proceeds that would be more appropriately satisfied through a delegation to the Chancellor without affecting the Trustees' ultimate approval process for such financings; now, therefore be it

RESOLVED, by the Board of Trustees of The California State University as follows:

Section 1. State Public Works Board Lease Revenue Financing Program

1.1 The authorizations set forth in this section shall be in full force and effect with respect to any State Public Works Board project which has been duly authorized by the Legislature in a budget act or other legislation and duly signed by the Governor and which is then in full force and effect.

1.2 The chancellor, the executive vice chancellor, the senior vice chancellor for business and finance, and the director of financing and risk management, and each of them (collectively, "Authorized Representatives of the Trustees") are hereby authorized and directed, for and in the name and on behalf of the trustees, to execute, acknowledge and deliver, and to prepare and review, as each of them deems appropriate, any and all construction agreements, equipment agreements, equipment leases, site leases, facility leases and other documents and agreements with such insertions and changes therein as such Authorized Representatives of the Trustees, with the advice of the General Counsel, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof, in order to provide for the planning, design, acquisition, construction, improvement, financing, and refinancing of the projects.

1.3 All Authorized Representatives of the Trustees are authorized and directed, for and in the name and on behalf of the Trustees, to do any and all things, take any and all actions and execute and deliver any and all certificates, agreements and documents which they, or any of them, may deem necessary or advisable in order to facilitate any interim loan of the Board and the lawful issuance and delivery of the obligations of the Board.

Section 2. California State University Bond Act of 1947 Financing Program

2.1 The chancellor, the executive vice chancellor, the senior vice chancellor for business and finance, and the director of financing and risk management, and each of them (collectively, “Authorized Representatives of the Trustees”), are hereby authorized and directed, for and in the name and on behalf of the trustees, to take any and all actions necessary to refinance any existing bonds issued pursuant to the Bond Act of 1947 if the refinancing transaction will result in net present value savings, as determined by an Authorized Representative of the Trustees and which determination shall be final and conclusive. Authorized Representatives of the Trustees are authorized to execute, acknowledge and deliver, and to prepare and review, as each of them deems appropriate, all bond resolutions, official statements and all other documents, certificates, agreements and information necessary to accomplish such refinancing transactions.

Section 3. Auxiliary Organization Debt Issuance Programs

3.1 Title 5, California Code of Regulations, Section 42500 (d) is being amended to restate and make it clear that auxiliary organizations may issue debt instruments to finance or refinance projects. For purposes of this section, “debt instruments” means, loans, notes, bonds, finance leases, installment purchase or sale agreements, and certificates of participation.

3.2 The chancellor shall provide the Trustees with information prior to auxiliary organizations issuing debt instruments except for certain transactions as further described in this section. Upon the Trustees being provided with information about the transaction, the chancellor, the executive vice chancellor, the senior vice chancellor for business and finance, and the director of financing and risk management, and each of them (collectively, “Authorized Representatives of the Trustees”) may execute documents, attest to statements of fact and take all actions necessary on behalf of the Trustees to approve the financing and to assist the recognized auxiliary organization to complete and to qualify such financing transactions as tax-exempt, unless one or more of the Trustees ask that the transaction be held for further review.

3.3 For auxiliary organization transactions that are only for the purpose of refinancing existing debt on real property projects, a special processing rule may apply. If the chancellor determines that (1) the primary purpose for such a refinancing is to produce net debt service savings and (2) the structure of the refinancing will result in net debt service savings, then the chancellor, the executive vice chancellor, the senior vice chancellor for business and finance, the director of financing and risk management, and each of them, without special notice to the Trustees, may execute documents, attest to statements of fact, and take all actions necessary on behalf of the Trustees to approve the refinancing

and to assist any recognized auxiliary organization to complete and to qualify the refinancing transaction as tax-exempt. If the primary purpose of the refinancing transaction as determined by the chancellor, is for reasons other than to produce net debt service savings or the structure does not result in net debt service savings, then the transaction is subject to the procedures described in Section 3.2.

3.4 The chancellor shall require campus presidents to establish campus procedures applicable to campus auxiliary organizations for the issuance of debt instruments to finance or to refinance personal property with lease-purchase or other tax-exempt financing methods. The procedures issued by the chancellor need not contain a requirement for presentation of such financings to the Trustees. Campus presidents shall be authorized to take all actions to assist the auxiliary organization on behalf of the Trustees to complete and qualify such financing transactions as tax-exempt.

3.5 The delegations conferred by the subsections of this resolution are limited and do not authorize the chancellor or other Authorized Representatives of the Trustees to establish any indebtedness of the State of California, the Board of Trustees, any CSU campus, or any officers or employees of any of them. Lending or pledging the credit of any of these entities is not intended or authorized by this resolution.

Section 4. Tax Law Requirement for Reimbursement of Project Costs

4.1 For those projects which may be financed under the authority of the Trustees, the chancellor, the executive vice chancellor, the senior vice chancellor for business and finance, and the director of financing and risk management, and each of them (collectively, "Authorized Representatives of the Trustees"), are hereby authorized to make declarations on behalf of the Trustees solely for the purposes of establishing compliance with the requirements of Section 1.150-2 of the U.S. Treasury Regulations; provided, however that any such declaration:

4.1.1. Will not bind the Trustees to make any expenditure, incur any indebtedness, or proceed with the project or financing; and

4.1.2. Will establish the intent of the Trustees at the time of the declaration to use proceeds of future indebtedness, if subsequently authorized by the Trustees, to reimburse the Trustees for expenditures as permitted by the U.S. Treasury Regulations.

10
EXHIBIT A
Fin.-Item 2
January 26-27, 1999

Section 5. Effective Date and Implementation

5.1 Within the scope of this financing policy, the chancellor is authorized to further define, clarify and otherwise make and issue additional interpretations and directives as needed to implement the provisions of this policy.

5.2 This resolution supercedes RFIN 01-94-01 and shall take effect immediately.

Exhibit A
Fin.-Item 2
November 10-11, 1998

Proposed changes in the California Code of Regulations

Title 5 42500

~~(c) Auxiliary organizations may not enter into any contract or other business arrangement involving real property, without prior approval of the campus president, and without prior notification and consultation with the Office of the Chancellor.~~

(c) Auxiliary organizations may issue debt instruments to finance or refinance projects in connection with their mission upon prior approval of the campus president and pursuant to policies of the Board of Trustees as may be implemented by the Chancellor. For purposes of this section, "debt instruments" means loans, notes, bonds, finance leases, installment purchase or sale agreements, and certificates of participation.

[Deletion of present text is shown by strikeover: addition of text is shown by underscore.]

Exhibit B
Finance—Item 2

Auxiliary Financing Review and Approval Process

See Printed Agenda