

Chapter 28
Utah School Bond Guaranty Act

Part 1
General Provisions

53A-28-101 Title.

This chapter shall be known as the "Utah School Bond Guaranty Act."

Enacted by Chapter 62, 1996 General Session

53A-28-102 Definitions.

- (1) "Board" means the board of education of a school district existing now or later under the laws of the state.
- (2) "Bond" means any general obligation bond or refunding bond issued after the effective date of this chapter.
- (3) "Default avoidance program" means the school bond guaranty program established by this chapter.
- (4) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a board payable in whole or in part from revenues derived from ad valorem taxes and that constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitation.
- (5) "Paying agent" means the corporate paying agent selected by the board for a bond issue who is:
 - (a) duly qualified; and
 - (b) acceptable to the state treasurer.
- (6) "Permanent school fund" means the state school fund described in the Utah Constitution, Article X, Section 5(1).
- (7) "Refunding bond" means any general obligation bond issued by a board for the purpose of refunding its outstanding general obligation bonds.
- (8) "School district" means any school district existing now or later under the laws of the state.

Enacted by Chapter 62, 1996 General Session

Part 2
State's Guarantee - Monitoring of Financial Solvency

53A-28-201 Contract with bondholders -- Full faith and credit of state is pledged -- Limitation as to certain refunded bonds.

- (1)
 - (a) The state of Utah pledges to and agrees with the holders of any bonds that the state will not alter, impair, or limit the rights vested by the default avoidance program with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.
 - (b) Notwithstanding Subsection (1)(a), nothing contained in this chapter precludes an alteration, impairment, or limitation if adequate provision is made by law for the protection of the holders of the bonds.

- (c) Each board may refer to this pledge and undertaking by the state in its bonds.
- (2)
- (a) The full faith and credit and unlimited taxing power of the state is pledged to guarantee full and timely payment of the principal of (either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, bonds as such payments shall become due (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default of otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration).
 - (b) This guaranty does not extend to the payment of any redemption premium.
 - (c) Reference to this chapter by its title on the face of any bond conclusively establishes the guaranty provided to that bond under provisions of this chapter.
- (3)
- (a) Any bond guaranteed under this chapter that is refunded and considered paid for the purposes of and within the meaning of Subsection 11-27-3(6), no longer has the benefit of the guaranty provided by this chapter from and after the date on which that bond was considered to be paid.
 - (b) Any refunding bond issued by a board that is itself secured by government obligations until the proceeds are applied to pay refunded bonds, as provided in Title 11, Chapter 27, Utah Refunding Bond Act, is not guaranteed under the provisions of this chapter, until the refunding bonds cease to be secured by government obligations as provided in Title 11, Chapter 27, Utah Refunding Bond Act.
- (4) Only validly issued bonds issued after the effective date of this chapter are guaranteed under this chapter.

Enacted by Chapter 62, 1996 General Session

53A-28-202 Program eligibility -- Option to forego guaranty.

- (1)
- (a) Any board may request that the state treasurer issue a certificate evidencing eligibility for the state's guaranty under this chapter.
 - (b) After reviewing the request, if the state treasurer determines that the board is eligible, the state treasurer shall promptly issue the certificate and provide it to the requesting board.
 - (c)
 - (i) The board receiving the certificate and all other persons may rely on the certificate as evidencing eligibility for the guaranty for one year from and after the date of the certificate, without making further inquiry of the state treasurer during that year.
 - (ii) The certificate of eligibility is valid for one year even if the state treasurer later determines that the school board is ineligible.
- (2) Any board that chooses to forego the benefits of the guaranty provided by this chapter for a particular issue of bonds may do so by not referring to this chapter on the face of its bonds.
- (3) Any board that has bonds, the principal of or interest on which has been paid, in whole or in part, by the state under this chapter may not issue any additional bonds guaranteed by this act until:
- (a) all payment obligations of the board to the state under the default avoidance program are satisfied; and

- (b) the state treasurer and the state superintendent of public instruction each certify in writing, to be kept on file by the state treasurer and the state superintendent, that the board is fiscally solvent.
- (4) Bonds not guaranteed by this chapter are not included in the definition of "bonds" in Section 53A-28-201 as used generally in this chapter and are not subject to the requirements of and do not receive the benefits of this chapter.

Enacted by Chapter 62, 1996 General Session

53A-28-203 Fiscal solvency of school districts -- Duties of state treasurer and attorney general.

- (1) The state superintendent of public instruction shall:
 - (a) monitor the financial affairs and condition of each board in the state to evaluate each school board's financial solvency; and
 - (b) report immediately to the governor and state treasurer any circumstances suggesting that a school district will be unable to timely meet its debt service obligations and recommend a course of remedial action.
- (2)
 - (a) The state treasurer shall determine whether or not the financial affairs and condition of a board are such that it would be imprudent for the state to guarantee the bonds of that board.
 - (b) If the state treasurer determines that the state should not guarantee the bonds of that board, the state treasurer shall:
 - (i) prepare a determination of ineligibility; and
 - (ii) keep it on file in the office of the state treasurer.
 - (c) The state treasurer may remove a board from the status of ineligibility when a subsequent report or other information made available to the state treasurer evidences that it is no longer imprudent for the state to guarantee the bonds of that board.
- (3) Nothing in this section affects the state's guaranty of bonds of a board issued:
 - (a) before determination of ineligibility;
 - (b) after the eligibility of the board is restored; or
 - (c) under a certificate of eligibility issued under Section 53A-28-202.

Amended by Chapter 221, 2003 General Session

**Part 3
Guaranty Operation**

53A-28-301 Business administrator duties -- Paying agent to provide notice -- State treasurer to execute transfer to paying agents -- Effect of transfer.

- (1)
 - (a) The business administrator of each board with outstanding, unpaid bonds shall transfer money sufficient for the scheduled debt service payment to its paying agent at least 15 days before any principal or interest payment date for the bonds.
 - (b) The paying agent may, if instructed to do so by the business administrator, invest the money at the risk and for the benefit of the board until the payment date.

- (c) A business administrator who is unable to transfer the scheduled debt service payment to the paying agent 15 days before the payment date shall immediately notify the paying agent and the state treasurer by:
 - (i) telephone;
 - (ii) a writing sent by facsimile transmission; and
 - (iii) a writing sent by first-class United States mail.
- (2) If sufficient funds are not transferred to the paying agent as required by Subsection (1), the paying agent shall notify the state treasurer of that failure in writing at least 10 days before the scheduled debt service payment date by:
 - (a) telephone;
 - (b) a writing sent by facsimile transmission; and
 - (c) a writing sent by first-class United States mail.
- (3)
 - (a) If sufficient money to pay the scheduled debt service payment has not been transferred to the paying agent, the state treasurer shall, on or before the scheduled payment date, transfer sufficient money to the paying agent to make the scheduled debt service payment.
 - (b) The payment by the treasurer:
 - (i) discharges the obligation of the issuing board to its bondholders for the payment; and
 - (ii) transfers the rights represented by the general obligation of the board from the bondholders to the state.
 - (c) The board shall pay the transferred obligation to the state as provided in this chapter.

Amended by Chapter 342, 2011 General Session

53A-28-302 State financial assistance intercept mechanism -- State treasurer duties -- Interest and penalty provisions.

- (1)
 - (a) If one or more payments on bonds are made by the state treasurer as provided in Section 53A-28-301, the state treasurer shall:
 - (i) immediately intercept any payments from the Uniform School Fund or from any other source of operating money provided by the state to the board that issued the bonds that would otherwise be paid to the board by the state; and
 - (ii) apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the board to the state arising from those payments, including interest and penalties, are paid in full.
 - (b) The state has no obligation to the board or to any person or entity to replace any money intercepted under authority of Subsection (1)(a).
- (2) The board that issued bonds for which the state has made all or part of a debt service payment shall:
 - (a) reimburse all money drawn by the state treasurer on its behalf;
 - (b) pay interest to the state on all money paid by the state from the date the money was drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus 1%; and
 - (c) pay all penalties required by this chapter.
- (3)
 - (a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the board on the state, market interest and penalty rates,

and the cost of funds, if any, that were required to be borrowed by the state to make payment on the bonds.

- (b) The state treasurer may, after considering the circumstances giving rise to the failure of the board to make payment on its bonds in a timely manner, impose on the board a penalty of not more than 5% of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.
- (4)
- (a)
 - (i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one year from the state's payment of a board's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the board to compel it to:
 - (A) levy and provide property tax revenues to pay debt service on its bonds when due as required by Title 11, Chapter 14, Local Government Bonding Act; and
 - (B) meet its repayment obligations to the state.
 - (ii) In pursuing its rights under this Subsection (4)(a), the state shall have the same substantive and procedural rights under Title 11, Chapter 14, Local Government Bonding Act, as would a holder of the bonds of a board.
 - (b) The attorney general shall assist the state treasurer in these duties.
 - (c) The board shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.
- (5)
- (a) Except as provided in Subsection (5)(c), any board whose operating funds were intercepted under this section may replace those funds from other board money or from ad valorem property taxes, subject to the limitations provided in this Subsection (5).
 - (b) A board may use ad valorem property taxes or other money to replace intercepted funds only if the ad valorem property taxes or other money was derived from:
 - (i) taxes originally levied to make the payment but which were not timely received by the board;
 - (ii) taxes from a special levy made to make the missed payment or to replace the intercepted money;
 - (iii) money transferred from the capital outlay fund of the board or the undistributed reserve, if any, of the board; or
 - (iv) any other source of money on hand and legally available.
 - (c) Notwithstanding the provisions of Subsections (5)(a) and (b), a board may not replace operating funds intercepted by the state with money collected and held to make payments on bonds if that replacement would divert money from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon a second time.

Amended by Chapter 342, 2011 General Session

Part 4

Mechanisms for Financing the State's Guaranty

53A-28-401 Backup liquidity arrangements -- Issuance of notes.

(1)

- (a) If, at the time the state is required to make a debt service payment under its guaranty on behalf of a board, sufficient money of the state is not on hand and available for that purpose, the state treasurer may:
 - (i) seek a loan from the Permanent School Fund sufficient to make the required payment; or
 - (ii) issue state debt as provided in Subsection (2).
 - (b) Nothing in this Subsection (1) requires the Permanent School Fund to lend money to the state treasurer.
- (2)
- (a) The state treasurer may issue state debt in the form of general obligation notes to meet its obligations under this chapter.
 - (b) The amount of notes issued may not exceed the amount necessary to make payment on all bonds with respect to which the notes are issued plus all costs of issuance, sale, and delivery of the notes, rounded up to the nearest natural multiple of \$5,000.
 - (c) Each series of notes issued may not mature later than 18 months from the date the notes are issued.
 - (d) Notes issued may be refunded using the procedures set forth in this chapter for the issuance of notes, in an amount not more than the amount necessary to pay principal of and accrued but unpaid interest on any refunded notes plus all costs of issuance, sale, and delivery of the refunding notes, rounded up to the nearest natural multiple of \$5,000.
 - (e) Each series of refunding notes may not mature later than 18 months from the date the refunding notes are issued.
- (3)
- (a) Before issuing or selling any general obligation note to other than a state fund or account, the state treasurer shall:
 - (i) prepare a written plan of financing; and
 - (ii) file it with the governor.
 - (b) The plan of financing shall provide for:
 - (i) the terms and conditions under which the notes will be issued, sold, and delivered;
 - (ii) the taxes or revenues to be anticipated;
 - (iii) the maximum amount of notes that may be outstanding at any one time under the plan of financing;
 - (iv) the sources of payment of the notes;
 - (v) the rate or rates of interest, if any, on the notes or a method, formula, or index under which the interest rate or rates on the notes may be determined during the time the notes are outstanding; and
 - (vi) all other details relating to the issuance, sale, and delivery of the notes.
 - (c) In identifying the taxes or revenues to be anticipated and the sources of payment of the notes in the financing plan, the state treasurer may include:
 - (i) the taxes authorized by Section 53A-28-402;
 - (ii) the intercepted revenues authorized by Section 53A-28-302;
 - (iii) the proceeds of refunding notes; or
 - (iv) any combination of Subsections (3)(c)(i), (ii), and (iii).
 - (d) The state treasurer may include in the plan of financing the terms and conditions of arrangements entered into by the state treasurer on behalf of the state with financial and other institutions for letters of credit, standby letters of credit, reimbursement agreements, and remarketing, indexing, and tender agent agreements to secure the notes, including payment from any legally available source of fees, charges, or other amounts coming due under the agreements entered into by the state treasurer.

- (e) When issuing the notes, the state treasurer shall issue an order setting forth the interest, form, manner of execution, payment, manner of sale, prices at, above, or below face value, and all details of issuance of the notes.
- (f) The order and the details set forth in the order shall conform with any applicable plan of financing and with this chapter.
- (g)
 - (i) Each note shall recite that it is a valid obligation of the state and that the full faith, credit, and resources of the state are pledged for the payment of the principal of and interest on the note from the taxes or revenues identified in accordance with its terms and the constitution and laws of Utah.
 - (ii) These general obligation notes do not constitute debt of the state for the purposes of the 1.5% debt limitation of the Utah Constitution, Article XIV, Section 1.
- (h) Immediately upon the completion of any sale of notes, the state treasurer shall:
 - (i) make a verified return of the sale to the state auditor, specifying the amount of notes sold, the persons to whom the notes were sold, and the price, terms, and conditions of the sale; and
 - (ii) credit the proceeds of sale, other than accrued interest and amounts required to pay costs of issuance of the notes, to the General Fund to be applied to the purpose for which the notes were issued.

Amended by Chapter 342, 2011 General Session

53A-28-402 Unlimited ad valorem tax as pledge of full faith and credit -- State Tax Commission duties -- Property tax abated.

- (1)
 - (a) In each year after the issuance of general obligation notes under this chapter and until all outstanding notes are retired, there is levied a direct annual tax on all real and personal property within the state subject to state taxation, sufficient to pay all principal of and interest on the general obligation notes as they become due.
 - (b) If money expected to be intercepted under Section 53A-28-302 is expected to be insufficient to reimburse the state for its payments of school districts' scheduled debt service payments or if it is necessary for the state treasurer to borrow as provided in Section 53A-28-401 and amounts to be intercepted under Section 53A-28-302 are expected to be insufficient to timely pay the general obligation notes issued or other borrowing undertaken under that section, the state treasurer shall certify to and give notice to the state tax commission of the amount of the deficiency.
 - (c) After receipt of that certified notice from the state treasurer, the state tax commission shall:
 - (i) immediately fix the tax rate necessary and levy direct ad valorem property tax on all real and personal property in the state subject to state taxation sufficient to provide money in the amount of the deficiency stated in the notice; and
 - (ii) require that the tax be collected and remitted as soon as may be in the ordinary course of ad valorem tax levy and collection.
- (2) To the extent that other legally available revenues and funds of the state are sufficient to meet the certified deficiency, the property tax for this purpose is abated.

Amended by Chapter 342, 2011 General Session

