

UTAH HOUSING FINANCE AGENCY

AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Ron Bigelow

This act modifies the Community and Economic Development Code by amending the Utah Housing Finance Agency Act to authorize the agency's status as a public corporation. This act amends the corporation's exemptions from and compliance with certain acts. This act amends audit, immunity, and contracting provisions for the corporation. This act also makes technical corrections to this code. This act repeals authorization for state grants to the agency. This act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

9-4-901, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-4-902, as last amended by Chapter 250, Laws of Utah 1993

9-4-903, as last amended by Chapter 250, Laws of Utah 1993

9-4-904, as last amended by Chapter 243, Laws of Utah 1996

9-4-905, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-4-906, as last amended by Chapter 20, Laws of Utah 1995

9-4-907, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-4-908, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-4-909, as last amended by Chapter 250, Laws of Utah 1993

9-4-910, as last amended by Chapter 250, Laws of Utah 1993

9-4-911, as last amended by Chapter 250, Laws of Utah 1993

9-4-912, as last amended by Chapter 4, Laws of Utah 1993

9-4-913, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-4-914, as last amended by Chapter 4, Laws of Utah 1993



- 28 **9-4-915**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 29 **9-4-916**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 30 **9-4-917**, as last amended by Chapter 4, Laws of Utah 1993
- 31 **9-4-918**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 32 **9-4-919**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 33 **9-4-920**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 34 **9-4-922**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 35 **9-4-923**, as last amended by Chapter 20, Laws of Utah 1995
- 36 **9-4-924**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 37 **9-4-925**, as enacted by Chapter 250, Laws of Utah 1993

38 ENACTS:

- 39 **9-4-904.5**, Utah Code Annotated 1953
- 40 **9-4-926**, Utah Code Annotated 1953

41 REPEALS:

- 42 **9-4-921**, as renumbered and amended by Chapter 241, Laws of Utah 1992

43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section **9-4-901** is amended to read:

45 **Part 9. Utah Housing Corporation Act**

46 **9-4-901. Title.**

47 This part is known as the "Utah Housing [~~Finance Agency~~] Corporation Act."

48 Section 2. Section **9-4-902** is amended to read:

49 **9-4-902. Policy -- Finding and declaration.**

50 (1) It is declared that the policy of the state of Utah is to assure the health, safety, and
51 welfare of its citizens, that an adequate supply of decent, safe, and sanitary housing is essential to
52 the well-being of the citizens of the state, and that an adequate supply of mortgage funds for
53 housing at reasonable interest rates is in the public interest.

54 (2) It is found and declared that:

55 (a) there continues to exist throughout the state a seriously inadequate supply of safe and
56 sanitary dwelling accommodations within the financial means of persons and families of low or
57 moderate income who wish to purchase or rent residential housing[~~-From~~]; and

58 (b) from time to time the high rates of interest charged by mortgage lenders seriously

59 restrict the transfer of existing housing and new housing starts.

60 (3) It is found and declared that the reduction in residential construction starts associated
61 with the high rates causes a condition of substantial unemployment and underemployment in the
62 construction industry which impedes the economy of the state and affects the welfare and
63 prosperity of all the people of the state.

64 (4) It is found and declared that:

65 (a) these conditions associated with the recurrent shortages of residential mortgage funds
66 contribute to slums and blight in the cities and rural areas of the state and ultimately to the
67 deterioration of the quality of living conditions within the state [~~of Utah. In~~]; and

68 (b) in accordance with the purpose of this part to assist in providing housing for low and
69 moderate income persons who otherwise could not achieve decent, safe, and sanitary housing, the
70 agency shall make every effort to make housing available in rural, inner city, and other areas
71 experiencing difficulty in securing construction and mortgage loans, and to make decent, safe, and
72 sanitary housing available to low income persons and families.

73 (5) It is found and declared that in order to assure an adequate fund of private capital into
74 this housing, the cooperation between private enterprise and state government is essential and is
75 in the public interest.

76 (6) It is found and declared that low and moderate income persons in Utah have a wide
77 range of housing needs, which necessitates the development of many different kinds of programs
78 to address those needs, including programs providing mortgage loans, nontraditional loans, grants,
79 and other forms of financial assistance, and combinations of these forms.

80 (7) It is found and declared that there are private organizations and governmental entities
81 throughout Utah that are endeavoring to improve the availability of housing for low and moderate
82 income, but many [~~such~~] of these organizations and entities lack expertise and financial resources
83 to act efficiently and expeditiously in [~~such~~] these efforts.

84 (8) It is found and declared that innovative programs that bring together resources from
85 the public, nonprofit, and private sector are necessary in order to increase the supply of housing
86 for low and moderate individuals, but these programs usually need advice and financial assistance
87 to become established.

88 (9) It is declared that all of the foregoing are public purposes and uses for which moneys
89 may be borrowed, expended, advanced, loaned, or granted, and that these activities serve a public

90 purpose in improving or otherwise benefiting the people of this state, and that the necessity of
91 enacting the provisions [~~set forth~~] in this part is in the public interest and is [~~hereby~~] so declared
92 as a matter of express legislative determination.

93 (10) It is found and declared that the compelling need within the state for the creation of
94 an adequate supply of mortgage funds at reasonable interest rates and for other kinds of financial
95 assistance to help provide affordable housing for low and moderate income individuals can be best
96 met by the establishment of an independent [~~state agency and a~~] body corporate and politic,
97 constituting a public corporation, vested with the powers and duties specified in this part.

98 (11) It is declared that the corporation is intended to operate:

99 (a) with the power to issue tax exempt bonds to finance the purchase of mortgage loans
100 to qualified buyers;

101 (b) as a financially independent body; and

102 (c) so that its debts shall be payable solely from payments received by the corporation from
103 mortgage borrowers and other revenues generated internally by the corporation.

104 Section 3. Section **9-4-903** is amended to read:

105 **9-4-903. Definitions.**

106 As used in this part the following words and terms have the following meanings, unless a
107 different meaning clearly appears from the context:

108 [~~(1) "Agency" means the Utah Housing Finance Agency created by Section 9-4-904.~~]

109 [~~(2)~~] (1) "Bonds," "notes," and "other obligations" mean any bonds, notes, debentures,
110 interim certificates, or other evidences of financial indebtedness of the [~~agency~~] corporation
111 authorized to be issued under the provisions of this part.

112 [~~(3)~~] (2) "Construction loan" means a short-term advance of monies for the purpose of
113 constructing residential housing for low and moderate income persons.

114 (3) "Corporation" means the Utah Housing Corporation created by Section 9-4-904, which,
115 prior to July 1, 2001, was named the Utah Housing Finance Agency.

116 (4) "Employee of the [~~agency~~] corporation" means any individual who is employed by the
117 [~~agency~~] corporation but who is not a [~~member~~] trustee of the [~~agency~~] corporation.

118 (5) "Financial assistance" includes:

119 (a) a loan, whether interest or noninterest bearing, secured or unsecured;

120 (b) a loan that converts to a grant upon the occurrence of specified conditions;

121 (c) a development loan;

122 (d) a grant;

123 (e) an award;

124 (f) a subsidy;

125 (g) a guarantee;

126 (h) a warranty;

127 (i) a lease;

128 (j) a payment on behalf of a borrower of an amount usually paid by a borrower, including

129 a down payment;

130 (k) any other form of financial assistance that helps provide affordable housing for low and

131 moderate income persons; or

132 (l) any combination of the foregoing.

133 (6) "Housing development" means a residential housing project, which includes residential

134 housing for low and moderate income persons.

135 (7) "Housing sponsor" includes a person who constructs, develops, rehabilitates,

136 purchases, or owns a housing development that is or will be subject to legally enforceable

137 restrictive covenants that require the housing development to provide, at least in part, residential

138 housing to low and moderate income persons, including a local public body, a nonprofit, limited

139 profit, or for profit corporation, a limited partnership, a limited liability company, a joint venture,

140 a subsidiary of the **h [agency] CORPORATION h**, or any subsidiary of the subsidiary, a cooperative,

140a a mutual housing

141 organization, or any other type of entity or arrangement that helps provide affordable housing for

142 low and moderate income persons.

143 (8) "Interest rate contract" means interest rate exchange contracts, interest rate floor

144 contracts, interest rate ceiling contracts, and other similar contracts authorized in a resolution or

145 policy adopted or approved by the trustees.

146 [~~8~~] (9) "Local public body" means the state, any municipality, county, district, or other

147 subdivision or instrumentality of the state, including redevelopment agencies and housing

148 authorities created under Part 6.

149 [~~9~~] (10) "Low and moderate income persons" means persons, irrespective of race,

150 religion, creed, national origin, or sex, as determined by the **h [agency] CORPORATION h** to require

150a such assistance as

151 is made available by this part on account of insufficient personal or family income taking into

152 consideration [~~without limiting the generality thereof, such~~] factors [~~as follows~~], including:

153 (a) the amount of income [~~of such~~] that persons and families have available for housing
154 needs;

155 (b) the size of family;

156 (c) whether or not a person is a single head of household;

157 (d) the cost and condition of residential housing available; and

158 (e) the ability of [~~such~~] persons and families to compete successfully in the normal private
159 housing market and to pay the amounts at which private enterprise is providing decent, safe, and
160 sanitary housing.

161 [~~(10)~~] (11) "Mortgage lender" means any bank, trust company, savings and loan
162 association, credit union, mortgage banker, or other financial institution authorized to transact
163 business in the state, any local public body, or any other entity, profit or nonprofit, that makes
164 mortgage loans.

165 [~~(11)~~] (12) "Mortgage loan" means a loan secured by a mortgage, which loan may bear
166 interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of
167 which are used for the purpose of financing the construction, development, rehabilitation, or
168 purchase of residential housing for low and moderate income persons, including low and moderate
169 income persons who are first-time homebuyers, single heads of household, elderly, homeless, or
170 disabled.

171 [~~(12)~~] (13) "Mortgage" means a mortgage, deed of trust, or other instrument securing a
172 mortgage loan and constituting a lien on real property (the property being held in fee simple or on
173 a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of not less
174 than the term for repayment of the mortgage loan secured by the mortgage) improved or to be
175 improved by residential housing, creating a lien which may be first priority or subordinate.

176 [~~(13)~~] (14) "Rehabilitation" includes the reconstruction, rehabilitation, improvement, and
177 repair of residential housing.

178 [~~(14)~~] (15) "Residential housing" means a specific work or improvement within this state
179 undertaken primarily to provide dwelling accommodations, including land, buildings, and
180 improvements to land and buildings, whether in one to four family units or multifamily units, and
181 [~~such~~] other incidental or appurtenant nonhousing facilities [~~as may be incidental or appurtenant~~
182 ~~thereto~~], or as otherwise specified by the agency.

183 ~~[(15)]~~ (16) "State" means the state of Utah.

184 ~~[(16)]~~ (17) "State housing credit ceiling" means the amount specified in Subsection
185 42(h)(3)(C) of the Internal Revenue Code for each calendar year.

186 Section 4. Section **9-4-904** is amended to read:

187 **9-4-904. Creation -- Trustees -- Terms -- Vacancies -- Chair -- Powers -- Quorum --**
188 **Per diem and expenses.**

189 (1) (a) There is created an independent ~~[state agency and a]~~ body politic and corporate,
190 constituting a public corporation, known as the "Utah Housing [Finance Agency] Corporation."

191 (b) The corporation may also be known and do business as the:

192 (i) Utah Housing Finance Association; and

193 (ii) Utah Housing Finance Agency in connection with any contract entered into when that
194 was the corporation's legal name.

195 (c) Any other entity may not use the names described in Subsections (1)(a) and (b) without
196 the express approval of the corporation.

197 (2) The ~~[agency]~~ corporation shall be governed by a board of trustees composed of the
198 following nine [members as follows] trustees:

199 (a) three ex officio ~~[members]~~ trustees who shall be:

200 (i) the executive director of the Department of Community and Economic Development;

201 (ii) the commissioner of the Department of Financial Institutions or his designee; and

202 (iii) the state treasurer or his designee; and

203 (b) six public ~~[members]~~ trustees, being private citizens of the state, as follows:

204 (i) two people representing the mortgage lending industry;

205 (ii) two people representing the home building and real estate industry; and

206 (iii) two people representing the public at large.

207 (3) The governor shall:

208 (a) appoint the six public ~~[members]~~ trustees of the ~~[agency]~~ corporation with the advice
209 and consent of the Senate; and

210 (b) ensure that:

211 (i) the six public ~~[members]~~ trustees are from different counties and are residents of Utah;

212 and

213 (ii) not more than three of the public ~~[members]~~ trustees belong to the same political

214 party~~;~~ and].

215 ~~[(iii) none of the public members reside in the same county.]~~

216 (4) (a) Except as required by Subsection (4)(b), the six public ~~[members]~~ trustees shall be
217 appointed to terms of office of four years each.

218 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time
219 of appointment or reappointment, adjust the length of terms to ensure that the terms of ~~[agency~~
220 ~~members]~~ corporation trustees are staggered so that approximately half of the ~~[agency]~~ board is
221 appointed every two years.

222 (5) (a) Any of the six public ~~[members]~~ trustees of the ~~[agency]~~ corporation may be
223 removed from office for cause either by the governor or ~~[for cause]~~ by an affirmative vote of any
224 six ~~[members]~~ trustees of the ~~[agency]~~ corporation.

225 (b) When a vacancy occurs in the ~~[membership]~~ board of trustees for any reason, the
226 replacement shall be appointed for the unexpired term.

227 (c) Each public ~~[member]~~ trustee shall hold office for the term of his appointment and until
228 his successor has been appointed and qualified.

229 (d) Any public ~~[member]~~ trustee is eligible for reappointment but may not serve more than
230 two full consecutive terms.

231 (6) (a) The governor shall select the chair of the ~~[agency]~~ corporation.

232 (b) The ~~[members]~~ trustees shall elect from among their number a vice chair and other
233 officers they may determine.

234 (7) ~~[The powers of the agency shall be vested in the members thereof from time to time.]~~
235 Five ~~[members of the agency]~~ trustees of the corporation constitute a quorum for transaction of
236 ~~[agency]~~ business. An affirmative vote of at least five ~~[members]~~ trustees is necessary for any
237 action to be taken by the ~~[agency]~~ corporation. ~~[No]~~ A vacancy in the ~~[membership of the agency]~~
238 board of trustees may not impair the right of a quorum to exercise all rights and perform all duties
239 of the ~~[agency]~~ corporation.

240 (8) (a) (i) ~~[Members]~~ Trustees who are not government employees ~~[shall]~~ may not receive
241 ~~[no]~~ compensation or benefits for their services, but may receive a reasonable per diem and
242 reimbursement expenses incurred in the performance of the ~~[member's]~~ trustee's official duties at
243 the rates established by the ~~[Division of Finance under Sections 63A-3-106 and 63A-3-107]~~ board
244 of trustees.

245 (ii) ~~[Members]~~ Trustees may decline to receive per diem and expenses for their service.

246 (b) (i) State government officer and employee ~~[members]~~ trustees who do not receive
247 salary, per diem, or expenses from their agency for their service may receive per diem and
248 expenses incurred in the performance of their official duties from the ~~[agency]~~ corporation at the
249 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

250 (ii) State government officer and employee ~~[members]~~ trustees may decline to receive per
251 diem and expenses for their service.

252 Section 5. Section **9-4-904.5** is enacted to read:

253 **9-4-904.5. Corporation as continuation of agency.**

254 (1) Beginning July 1, 2001, the Utah Housing Finance Agency shall become known as the
255 Utah Housing Corporation.

256 (2) The corporation is a continuation of the Utah Housing Finance Agency and shall:

257 (a) possess all rights, title, privileges, powers, immunities, property, and claims of the
258 agency; and

259 (b) fulfill and perform all obligations of the agency, including all agency obligations
260 relating to outstanding bonds and notes.

261 Section 6. Section **9-4-905** is amended to read:

262 **9-4-905. President and chief executive officer -- Secretary-treasurer -- Powers and**
263 **duties -- Power to employ experts -- Power to employ independent legal counsel.**

264 (1) (a) The ~~[members]~~ trustees shall appoint ~~[an executive director]~~ a president who shall
265 be ~~[an employee]~~ the chief executive officer of the ~~[agency]~~ corporation, but who may not be a
266 ~~[member]~~ trustee of the ~~[agency]~~ corporation, and who shall serve at the pleasure of the ~~[members]~~
267 trustees and receive compensation as set by the ~~[members and approved by the governor]~~ trustees.

268 (b) The ~~[executive director]~~ president, who shall also be the secretary-treasurer, shall
269 administer, manage, and direct the affairs and activities of the ~~[agency]~~ corporation in accordance
270 with the policies, control, and direction of the ~~[members]~~ trustees.

271 (c) The ~~[executive director]~~ president shall approve all accounts for salaries, allowable
272 expenses of the ~~[agency]~~ corporation, or of any corporation employee or consultant ~~[thereof]~~, and
273 expenses incidental to the operation of the ~~[agency]~~ corporation. ~~[He]~~

274 (d) The president shall perform ~~[such]~~ any other duties as may be directed by the
275 ~~[members]~~ trustees in carrying out the purposes of this part.

276 (2) ~~(a)~~ The ~~[executive director]~~ president shall:

277 (i) attend the meetings of the ~~[agency, shall]~~ corporation;

278 (ii) keep a record of the proceedings of the ~~[agency,]~~ corporation; and ~~[shall]~~

279 (iii) maintain and be custodian of all:

280 (A) books, documents, and papers filed with the ~~[agency and of]~~ corporation;

281 (B) the minute book or journal of the ~~[agency]~~ corporation; and ~~[of]~~

282 (C) its official seal. ~~[He]~~

283 (b) The president may cause copies to be made of all minutes and other records and

284 documents of the ~~[agency]~~ corporation and may give certificates under seal of the ~~[agency]~~

285 corporation to the effect that ~~[such]~~ those copies are true copies, and all persons dealing with the

286 ~~[agency]~~ corporation may rely upon ~~[such]~~ those certificates.

287 (3) (a) The ~~[agency]~~ corporation may employ or engage technical experts, independent

288 professionals and consultants, and ~~[such]~~ any other officers, agents, or employees, permanent or

289 temporary, as it ~~[deems]~~ considers necessary to carry out the efficient operation of the ~~[agency]~~

290 corporation, and shall determine their qualifications, duties, and compensation.

291 (b) The ~~[members]~~ trustees may delegate to one or more of the ~~[agency's]~~ corporation's

292 agents, representatives, or employees ~~[such]~~ any administrative duties as they ~~[deem]~~ consider

293 proper.

294 (4) The ~~[agency]~~ corporation may employ and retain independent legal counsel.

295 Section 7. Section **9-4-906** is amended to read:

296 **9-4-906. Relation to certain acts.**

297 (1) The ~~[agency]~~ corporation is exempt from:

298 ~~[(4)]~~ (a) Title 51, Chapter 5, Funds Consolidation Act;

299 ~~[(2)]~~ (b) Title 51, Chapter 7, State Money Management Act of 1974;

300 ~~[(1)]~~ (c) Title 63, Chapter 38, Budgetary Procedures Act;

301 (d) Title 63, Chapter 38a, Revenue Procedures and Control Act;

302 ~~[(5)]~~ (e) Title 63, Chapter 56, Utah Procurement Code; ~~[and]~~

303 ~~[(3)]~~ (f) Title 63A, Utah Administrative Services Code; and

304 ~~[(6)]~~ (g) Title 67, Chapter 19, Utah State Personnel Management Act.

305 (2) The corporation shall comply with:

306 (a) Title 52, Chapter 4, Open and Public Meetings; and

307 (b) Title 63, Chapter 2, Government Records Access and Management Act.

308 Section 8. Section **9-4-907** is amended to read:

309 **9-4-907. Disclosure of interest.**

310 (1) Any [member] trustee, officer, or employee of the [agency] corporation who has, will
311 have, or later acquires an interest, direct or indirect, in any transaction with the [agency]
312 corporation shall immediately disclose the nature and extent of that interest in writing to the
313 [agency] corporation as soon as he has knowledge of the actual or prospective interest.

314 (2) (a) This disclosure shall be entered upon the minutes of the [agency] corporation.

315 (b) Upon [such] the disclosure, that [member] trustee, officer, or employee may participate
316 in any action by the [agency] corporation authorizing [such] the transaction.

317 Section 9. Section **9-4-908** is amended to read:

318 **9-4-908. Officer or employee -- No forfeiture of office or employment.**

319 Notwithstanding the provisions of any other law, no officer or employee of this state shall
320 be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance
321 of ~~[membership on]~~ appointment as a trustee of the [agency] corporation or his service thereon.

322 Section 10. Section **9-4-909** is amended to read:

323 **9-4-909. Surety bond required.**

324 (1) The [agency] corporation shall maintain:

325 (a) for each [member] trustee a surety bond in the penal sum of \$25,000[-]; and

326 (b) for the ~~[executive director]~~ president of the [agency] corporation a surety bond in the
327 penal sum of \$50,000.

328 (2) Each surety bond is to be conditioned upon the faithful performance of the duties of
329 the office of the [member] trustee or ~~[executive director]~~ president, as the case may be, and is to
330 be issued by a surety company authorized to transact business in the state ~~[of Utah]~~ as surety[-, and
331 is to be filed in the office of the state treasurer].

332 (3) Each [member] trustee and the ~~[executive director]~~ president shall maintain these
333 bonds in full force and effect.

334 (4) The [agency] corporation shall bear all costs of the surety bonds.

335 Section 11. Section **9-4-910** is amended to read:

336 **9-4-910. Corporation -- Powers.**

337 The [agency] corporation has and may exercise all powers necessary or appropriate to carry

338 out [~~and effectuate~~] the purposes of this part, including [~~without limiting the generality thereof,~~]
339 the following:

340 (1) to have perpetual succession as a body politic and corporate, constituting a public
341 corporation, and to adopt, amend, and repeal rules, policies, and procedures for the regulation of
342 its affairs and the conduct of its business;

343 (2) to sue and be sued in its own name;

344 (3) to have an official seal and power to alter that seal at will;

345 (4) to maintain an office at any place or places within this state it may designate;

346 (5) to adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry
347 into effect the powers and purposes of the [~~agency~~] corporation and the conduct of its business;

348 (6) to make and execute contracts and all other instruments necessary or convenient for
349 the performance of its duties and the exercise of its powers and functions under this part, including
350 contracts or agreements for the servicing and originating of mortgage loans;

351 (7) to employ advisers, consultants, and agents, including [~~, but not limited to,~~] financial
352 experts, independent legal counsel, and [~~such~~] any advisers, consultants, and agents as may be
353 necessary in its judgment and to fix their compensation;

354 (8) to procure insurance against any loss in connection with its property and other assets,
355 including mortgage loans, in amounts and from insurers it [~~deems~~] considers desirable;

356 (9) to borrow money and to issue bonds and notes or other evidences of indebtedness as
357 provided in this part;

358 (10) to receive and accept aid or contributions from any source of money, property, labor,
359 or other things of value to be held, used, loaned, granted, and applied to carry out the purposes of
360 this part subject to the conditions, if any, upon which the grants and contributions are made,
361 including [~~, but not limited to,~~] gifts or grants from any department, agency, or instrumentality of
362 the United States or of this state for any purpose consistent with this part;

363 (11) to enter into agreements with any local public body, any housing sponsor, any
364 department, agency, or instrumentality of the United States or this state, or with mortgagors and
365 mortgage lenders for the purpose of planning and regulating and providing for the financing and
366 refinancing, construction, rehabilitation, leasing, management, maintenance, operation, sale, or
367 other disposition of, any residential housing undertaken with the assistance of the [~~agency~~]
368 corporation under this part;

369 (12) to exercise all of its remedies following the default under any mortgage loan,
370 including:

371 (a) proceeding with a foreclosure action or private sale to obtain title to the real and
372 personal property held as collateral and taking assignments of leases and rentals;

373 (b) to own, lease, clear, reconstruct, rehabilitate, repair, maintain, manage, and operate this
374 property in preparation for its disposition; and

375 (c) to assign, encumber, sell, or otherwise dispose of ~~[any such]~~ this property;

376 (13) to invest any funds not required for immediate disbursement, including funds held
377 in reserve, in ~~[accordance]~~ a manner consistent with applicable provisions of Title 51, Chapter 7,
378 State Money Management Act of 1974;

379 (14) to provide technical and financial assistance to housing sponsors and advisory
380 committees in the development or operation of housing for low and moderate income persons;

381 (15) to gather and distribute data and information concerning the housing needs of low and
382 moderate income families within the various communities of this state;

383 (16) to the extent permitted under any contract with the holders of bonds, notes, and other
384 obligations of the ~~[agency]~~ corporation, to consent to any modification with respect to rate of
385 interest, time and payment of any installment of principal or interest security, or any other term of
386 any contract, mortgage, mortgage loan, mortgage loan commitment, contract, or agreement of any
387 kind to which the ~~[agency]~~ corporation is a party;

388 (17) to the extent permitted under any contract with the holders of bonds, notes, and other
389 obligations of the ~~[agency]~~ corporation, to enter into contracts with any mortgagor or housing
390 sponsor containing provisions enabling the mortgagor to reduce the rental or carrying charges to
391 persons unable to pay the regular schedule of charges where, by reason of other income or payment
392 by any department, agency, or instrumentality of the United States or of this state, the reduction
393 can be made without jeopardizing the economic stability of residential housing being financed;

394 (18) to acquire property within this state for the purpose of holding it for subsequent
395 disposition to a housing sponsor or other entity that can use it for residential housing for low and
396 moderate income persons, except that if no person can be found to use it in ~~[such a]~~ this manner,
397 the ~~[agency]~~ corporation may dispose of the property to any person;

398 (19) to purchase, own and operate residential housing for the benefit, in whole or in part,
399 of low and moderate income persons, so long as the ~~[agency]~~ corporation makes reasonable efforts

400 to sell that residential housing to a housing sponsor;

401 (20) to incorporate or form one or more subsidiaries of the [agency] corporation for the
402 purpose of carrying out any of the powers of the [agency] corporation and accomplishing any of
403 the purposes of the [agency] corporation, to invest in and provide financial assistance to these
404 subsidiaries, to borrow from these subsidiaries, to guarantee the obligations of these subsidiaries,
405 and to enter into agreements with these subsidiaries to carry out any of the [agency's] corporation's
406 powers under this part;

407 (21) to enter into partnership and limited liability company agreements, to purchase and
408 sell interests in housing sponsors, to serve as general partner of a partnership, and to serve as a
409 manager of a limited liability company to carry out any of the [agency's] corporation's powers
410 under this part;

411 (22) to require that persons receiving a mortgage loan or financial assistance from the
412 [agency] corporation subject the property involved to restrictive covenants that shall be considered
413 to be running with the land, regardless of whether or not the [agency] corporation enjoys privity
414 of estate or whether or not the covenant touches and concerns the burdened property;

415 (23) to enter into management agreements with any person or entity for the performance
416 by the person or entity for the [agency] corporation of any of its functions or powers, [~~upon such~~]
417 with terms and conditions as may be mutually agreeable;

418 (24) to sell, at public or private sale, with or without public bidding, any mortgage loan
419 or other obligation held by the [agency] corporation;

420 (25) to sell or convey real property owned by the [agency] corporation to low or moderate
421 income persons and housing sponsors, without consideration if the sale or conveyance will inure
422 primarily to the benefit of low or moderate income persons living in a housing development;

423 (26) upon making a determination that the financial status of a housing development [~~is~~
424 ~~such as to~~ will jeopardize any economic interest of the [agency] corporation in the housing
425 development, to assume managerial and financial control of the property or the owner and to
426 supervise and prescribe the activities of the property or the owner in [~~such~~] a manner and under
427 [~~such~~] terms and conditions as the [agency] corporation may stipulate in any contract;

428 (27) to supervise housing sponsors of housing developments;

429 (28) to service mortgage loans; and

430 (29) to do any act necessary or convenient to the exercise of the powers granted [~~by~~] in or

431 reasonably implied from this part [~~or reasonably implied therefrom~~].

432 Section 12. Section **9-4-911** is amended to read:

433 **9-4-911. Corporation -- Additional powers.**

434 (1) To accomplish the declared purposes of this part, the [agency] corporation has the
435 following powers in addition to others granted in this part:

436 (a) to purchase mortgage loans originated by mortgage lenders or local public bodies made
437 for the purpose of financing the construction, development, rehabilitation, or purchase of
438 residential housing for low and moderate income persons;

439 (b) to make mortgage loans and to provide financial assistance to housing sponsors for the
440 purpose of financing the construction, development, rehabilitation, or purchase of residential
441 housing for low and moderate income persons;

442 (c) to make mortgage loans and provide financial assistance to housing sponsors for the
443 purpose of financing the operations of a housing development that are necessary or desirable to
444 enable the housing development to remain available as residential housing for low and moderate
445 income persons, whether or not the housing development has been financed by the [agency]
446 corporation;

447 (d) to provide financial assistance to any housing authority created under Part 6, which
448 housing authorities may enter into commitments for and accept loans for a housing project or
449 projects as defined in Section 9-4-602; and

450 (e) to make mortgage loans and to provide financial assistance to low and moderate
451 income persons for the construction, rehabilitation, or purchase of residential housing.

452 (2) Bonds to purchase loans pursuant to Subsection (1)(a) shall be issued only after a
453 determination by the [agency] corporation that the loans are not otherwise available upon
454 reasonably equivalent terms and conditions from private lenders.

455 (3) Loans for owner-occupied housing made pursuant to Subsection (1)(a) may not include
456 a penalty for prepayment.

457 [~~(4) No mortgage loan is eligible for purchase by the agency if the loan was made more
458 than two years prior to the date of purchase.~~]

459 [~~(5)~~ (4) The [agency] corporation shall make rules [~~governing~~] or adopt policies and
460 procedures to govern the activities authorized under this section including rules, policies, and
461 procedures as to any or all of the following:

462 (a) procedures for the submission of requests or the invitation of proposals for the purchase
463 and sale of mortgage loans and the making of mortgage loans;

464 (b) rates, fees, charges, and other terms and conditions of originating or servicing mortgage
465 loans in order to protect against a realization of an excessive financial return or benefit by the
466 originator or servicer;

467 [~~(c)~~] the type and amount of collateral or security to be provided by housing authorities to
468 assure repayment of loans from the agency;]

469 [~~(d)~~] (c) the type and amount of collateral, payment bonds, performance bonds, or other
470 security to be provided for construction loans made by the corporation;

471 [~~(e)~~] (d) the nature and amounts of fees to be charged by the [agency] corporation to
472 provide for expenses and reserves of the [agency] corporation;

473 [~~(f)~~] (e) procedures allowing the [agency] corporation to prohibit persons who fail to
474 comply with the rules of the [agency] corporation with respect to the operations of any program
475 of the [agency] corporation from participating, either directly or indirectly, in the programs of the
476 [agency] corporation;

477 [~~(g)~~] (f) the terms and conditions under which the [agency] corporation may purchase and
478 make mortgage loans under each program of the [agency] corporation;

479 [~~(h)~~] (g) the terms and conditions under which the [agency] corporation may provide
480 financial assistance under each program of the [agency] corporation;

481 [~~(i)~~] (h) the terms and conditions under which the [agency] corporation may guarantee
482 mortgage loans under each program of the [agency] corporation; and

483 [~~(j)~~] (i) any other matters related to the duties or exercise of powers under this section.

484 [~~(6)~~] (5) (a) The [~~members~~] trustees of the [agency] corporation shall [~~appoint~~] elect the
485 directors, trustees, members, [~~and managers~~] if any, of each subsidiary. Service by a [~~member~~]
486 trustee of the [agency] corporation in any such capacity does not constitute a conflict of interest
487 for any purpose. The [agency] corporation may delegate any of its powers and duties under this
488 part to any subsidiary. Subsidiaries shall constitute legal entities separate and distinct from each
489 other, the [agency] corporation, and the state.

490 (b) Each note, bond, and other obligation of a subsidiary shall contain on its face a
491 statement to the effect that:

492 (i) the subsidiary is obligated to pay the same solely from the revenues or other funds of

493 the subsidiary;

494 (ii) neither the [agency] corporation nor the state nor any of its political subdivisions is
495 obligated to pay the same; and

496 (iii) neither the faith and credit nor the taxing power of the state or any of its political
497 subdivisions is pledged to the payment of principal, or redemption price of, or the interest on the
498 note, bond, or other obligation.

499 (c) Upon dissolution of any subsidiary of the [agency] corporation, any assets shall revert
500 to the [agency] corporation or to any successor to the [agency] corporation or, failing this
501 succession, to the state.

502 (6) (a) The corporation may:

503 (i) enter into interest rate contracts that its trustees determine are necessary, convenient,
504 or appropriate for the control or management of debt or for the cost of servicing debt; and

505 (ii) use corporation funds to satisfy its payment obligations under those contracts.

506 (b) Interest rate contracts may contain payment, security, default, termination, remedy, and
507 other terms and conditions that the trustees consider appropriate.

508 (c) Neither interest rate contracts nor funds used in connection with interest rate contracts
509 may be considered a deposit or investment.

510 Section 13. Section **9-4-912** is amended to read:

511 **9-4-912. Power to issue mortgage credit certificates -- Impact of federal legislation**
512 **on tax exempt status of corporation bond.**

513 (1) In order to accomplish the purposes of this part the [agency] corporation may issue
514 mortgage credit certificates pursuant to 26 U.S.C., Section 143, as amended, and the regulations
515 issued under the code and has the sole responsibility for issuing or approving the issuance of
516 mortgage credit certificates allowable to the state.

517 (2) None of the powers granted to the [agency] corporation by this part shall in any way
518 be diminished by the enactment of any federal legislation which would cause the interest on any
519 bonds, notes, or other obligations of the [agency] corporation to be subject to taxation under
520 federal law, nor shall the exemption from state taxation granted in this part be affected by any such
521 federal legislation.

522 Section 14. Section **9-4-913** is amended to read:

523 **9-4-913. Power to borrow money and make loans -- Issuance of notes and bonds.**

524 (1) The [agency] corporation has the power and is [hereby] authorized to borrow money
525 and to issue from time to time its notes, bonds, and other obligations in such principal amounts as
526 the [agency] corporation determines is necessary to provide sufficient funds for:

- 527 (a) the purchase of mortgage loans from mortgage lenders;
- 528 (b) the making of construction loans;
- 529 (c) the making of loans to housing authorities;
- 530 (d) the payment of interest on bonds, notes, and other obligations of the [agency]
531 corporation;
- 532 (e) the establishment of reserves to secure the bonds, notes, and other obligations;
- 533 (f) the making of mortgage loans;
- 534 (g) the making of loans to mortgage lenders or other lending institutions with respect to
535 multifamily residential rental housing under terms and conditions requiring the proceeds of these
536 loans to be used by these mortgage lenders or other lending institutions for the making of loans for
537 new multifamily residential rental housing or the acquisition or rehabilitation of existing
538 multifamily residential rental housing;
- 539 (h) the making of loans for the rehabilitation of residential housing; and
- 540 (i) all other expenditures of the [agency] corporation incident to and necessary or
541 convenient to carry out its purposes and powers.

542 (2) (a) The [agency] corporation shall have the power to issue notes to renew notes and
543 bonds to pay notes, including the interest thereon, and whenever it considers refunding expedient,
544 to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have
545 not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its
546 corporate purposes.

- 547 (b) The refunding bonds may be [~~(a)~~]:
 - 548 (i) sold and the proceeds applied to the purchase, redemption, or payment of the bonds to
549 be refunded[;]; or [~~(b)~~]
 - 550 (ii) exchanged for the bonds to be refunded.

551 (3) (a) Except as may otherwise be expressly provided by the [agency] corporation, every
552 issue of its notes or bonds shall be general obligations of the [agency] corporation payable solely
553 out of any revenues or monies of the [agency] corporation, subject only to any agreements with the
554 holders of particular notes or bonds pledging any particular monies or revenues.

555 (b) These bonds or notes may be additionally secured by a pledge of any grant or
556 contribution from the federal government or any corporation, association, institution, or person or
557 a pledge of any monies, income, or revenues of the [agency] corporation from any source.

558 (4) (a) The notes and bonds shall be authorized by resolution or resolutions of the [agency]
559 corporation, shall bear [such] the date or dates, and shall mature at [such] the time or times as
560 [such] the resolution or resolutions may provide, except that no note, including any renewals
561 thereof, shall mature more than five years from the date of its original issue, and no bond shall
562 mature more than 50 years from the date of its issue, as the resolution may provide.

563 (b) The notes and bonds shall bear interest at [such] the rate or rates, including variations
564 in [such] the rates, be in [such] denominations, be in [such] a form, either coupon or registered,
565 carry [such] the registration privileges, be executed in [such] the manner, be payable in [such] a
566 medium of payment, at [such] the place or places, and be subject to [such] the terms of redemption,
567 including redemption prior to maturity, as [such] the resolution or resolutions may provide.

568 (c) The notes and bonds of the [agency] corporation may be sold by the [agency]
569 corporation at public or private sale, and at the price or prices as the [agency] corporation shall
570 determine.

571 (d) (i) The notes and bonds may bear interest at a variable interest rate as [such] the
572 resolution may provide. [Such]

573 (ii) The resolution may establish a method, formula, or index pursuant to which the interest
574 rate on the notes and bonds may be determined from time to time.

575 (e) In connection with the notes and bonds the [agency] corporation may authorize and
576 enter into agreements or other arrangements with financial, banking, and other institutions for
577 letters of credit, standby letters of credit, surety bonds, reimbursement agreements, remarketing
578 agreements, indexing agreements, tender agent agreements, and other agreements with respect to
579 securing the notes and bonds, with respect to enhancing the marketability and credit worthiness
580 of the notes and bonds, with respect to determining a variable interest rate on the notes and bonds,
581 and with respect to the payment from any legally available source (which may include the proceeds
582 of the notes and bonds) of fees, charges, and other amounts coming due with respect to any such
583 agreements.

584 (5) Any resolution or resolutions authorizing any notes or bonds or [any] their issue
585 [thereof] may contain provisions, which shall be a part of the contract or contracts with [the] their

586 holders [~~thereof~~], as to:

587 (a) pledging all or any part of the revenues to secure the payment of the notes or bonds or
588 of any issue thereof, subject to [~~such~~] the agreements with noteholders or bondholders as may then
589 exist;

590 (b) pledging all or any part of the assets of the [~~agency~~] corporation, including mortgages
591 and obligations securing the same, to secure the payment of the notes or bonds or of any issue of
592 notes or bonds, subject to the agreements with noteholders or bondholders as may then exist;

593 (c) the use and disposition of the gross income from mortgages owned by the [~~agency~~]
594 corporation and payment of principal of mortgages owned by the [~~agency~~] corporation;

595 (d) the setting aside of reserves or sinking funds and [~~the~~] their regulation and disposition
596 [~~thereof~~];

597 (e) limitations on the purpose to which the proceeds of sale of notes or bonds may be
598 applied and pledging the proceeds to secure the payment of the notes or bonds or of [~~any~~] their
599 issue [~~thereof~~];

600 (f) limitations on the issuance of additional notes or bonds[;], including:

601 (i) the terms upon which additional notes or bonds may be issued and secured; and

602 (ii) the refunding of outstanding or other notes or bonds;

603 (g) the procedure, if any, by which the terms of any contract with noteholders or
604 bondholders may be amended or abrogated, the amount of notes or bonds to which the holders [~~of~~
605 ~~which~~] must consent [~~thereto~~], and the manner in which the consent may be given;

606 (h) limitations on the amount of monies to be expended by the [~~agency~~] corporation for
607 operating expenses of the [~~agency~~] corporation;

608 (i) vesting in a trustee or trustees [~~such~~] the property, rights, powers, and duties in trust as
609 the [~~agency~~] corporation may determine, which may include any or all of the rights, powers, and
610 duties of the trustee appointed by the noteholders or bondholders pursuant to this act and limiting
611 or abrogating the right of noteholders or bondholders to appoint a trustee under this act or limiting
612 the rights, powers, and duties of the trustee;

613 (j) defining the acts or omissions to act which shall constitute a default in the obligations
614 and duties of the [~~agency~~] corporation to the holders of the notes or bonds and providing for the
615 rights and remedies of the holders of the notes or bonds in the event of default, including as a
616 matter of right the appointment of a receiver; but the rights and remedies [~~shall~~] may not be

617 inconsistent with the general laws of the state and other provisions of this part; or

618 (k) any other matters, of like or different character, which in any way affect the security
619 or protection of the holders of the notes or bonds.

620 (6) (a) Any pledge made by the [agency] corporation shall be valid, enforceable, and
621 binding from the time when the pledge is made and shall have a lien priority based on the time of
622 grant or, if more than one lien is granted at a given time, as set forth in the resolution or instrument
623 pursuant to which the pledge is made.

624 (b) The revenues, monies, or property so pledged and thereafter received by the [agency]
625 corporation shall immediately be subject to the lien of [such] the pledge and shall constitute a
626 perfected lien without any physical delivery thereof or further act, and the lien of any such pledge
627 shall be valid and binding as against all parties having claims of any kind in tort, contract, or
628 otherwise against the [agency] corporation, irrespective of whether the parties have notice thereof.

629 (c) Neither the resolution nor any other instrument by which a pledge is created need be
630 recorded.

631 (7) The [agency] corporation, subject to [such] the agreements with noteholders or
632 bondholders as may then exist, shall have power out of any funds available for it to purchase notes
633 or bonds of the [agency] corporation, which shall [~~thereupon~~] immediately be cancelled, at a price
634 not exceeding:

635 (a) if the notes or bonds are then redeemable, the redemption price then applicable plus
636 accrued interest to the next interest payment thereon; or

637 (b) if the notes or bonds are not then redeemable, the redemption price applicable on the
638 first date after [such] the purchase upon which the notes or bonds become subject to redemption
639 plus accrued interest to [such] the date.

640 (8) (a) The notes and bonds shall be secured by a trust indenture by and between the
641 [agency] corporation and a corporate trustee, which may be any bank having the power of a trust
642 company or any trust company within or without the state. [Such]

643 (b) The trust indenture may contain [such] provisions for protecting and enforcing the
644 rights and remedies of the noteholders or bondholders as may be reasonable and proper and not
645 in violation of law, including covenants setting forth the duties of the [agency] corporation in
646 relation to the exercise of its corporate powers and the custody, safeguarding, and application of
647 all monies.

648 (c) The [agency] corporation may provide by the trust indenture for the payment of the
649 proceeds of the notes or bonds and the revenues to the trustee under the trust indenture or other
650 depository, and for the method of their disbursement [~~thereof~~], with [~~such~~] any safeguards and
651 restrictions as it may determine.

652 (d) All expenses incurred in carrying out the trust indenture may be treated as a part of the
653 operating expenses of the [agency] corporation.

654 (e) If the notes or bonds shall be secured by a trust indenture, the noteholders or
655 bondholders [~~shall~~] may not have [~~no~~] authority to appoint a separate trustee to represent them.

656 (9) Whether or not the notes and bonds are of the form and character as to be negotiable
657 instruments under the terms of the Uniform Commercial Code, the notes and bonds are [~~hereby~~
658 ~~made~~] negotiable instruments within the meaning of and for all the purposes of the Uniform
659 Commercial Code, subject only to the provisions of the notes and bonds relating to registration.

660 (10) In the event that any of the [~~members~~] trustees or officers of the [agency] corporation
661 shall cease to be [~~members~~] trustees or officers of the [agency] corporation prior to the delivery
662 of any notes or bonds or coupons signed by them, their signatures or facsimiles [~~thereof~~] of their
663 signatures shall nevertheless be valid and sufficient for all purposes, the same as if [~~such members~~]
664 the trustees or officers had remained in office until [~~such~~] the delivery.

665 (11) Neither the [~~members~~] trustees of the [agency] corporation nor any other person
666 executing the notes or bonds issued under this chapter are subject to personal liability or
667 accountability by reason of the issuance thereof.

668 (12) The [agency] corporation shall have the power to provide for the replacement of lost,
669 destroyed, or mutilated bonds or notes.

670 Section 15. Section **9-4-914** is amended to read:

671 **9-4-914. Capital reserve funds -- Capital reserve fund requirement -- Establishment**
672 **of other funds.**

673 (1) (a) (i) The [agency] corporation may create and establish one or more reserve funds,
674 herein referred to as "capital reserve funds", from: [(†)]

675 (A) any proceeds of sale of notes or bonds, to the extent provided in the resolution or
676 resolutions of the [agency] corporation authorizing the issuance thereof; [(††)]

677 (B) any monies appropriated and made available by the state for the purpose of the funds;
678 [(†††)]

679 (C) any monies directed by the [~~agency~~] corporation to be transferred to the funds; and
680 [~~(iv)~~]

681 (D) any other monies which may be made available to the [~~agency~~] corporation for the
682 purpose of the funds from any other source or sources.

683 (ii) All monies held in any capital reserve fund shall be used, as required, solely for the
684 payment of the principal of bonds or of the sinking fund payments [~~hereinafter mentioned~~] with
685 respect to the bonds, the purchase or redemption of bonds, the payment of interest on bonds, or the
686 payment of any redemption premium required to be paid when the bonds are redeemed prior to
687 maturity.

688 (b) (i) Monies in any [~~such~~] capital reserve fund [~~shall~~] may not be withdrawn [~~therefrom~~]
689 from the fund at any time in an amount as would reduce the level of monies in [~~such~~] the fund to
690 less than the capital reserve fund requirement [~~hereinafter defined~~], except for the purpose of
691 paying principal and redemption price of and interest on bonds and the sinking fund payments
692 [~~hereinafter mentioned~~], as the [~~same~~] payments become due and for the payment of which other
693 monies of the [~~agency~~] corporation are not available.

694 (ii) Any income or interest earned by the investment of monies held in any [~~such~~] fund
695 may be transferred by the [~~agency~~] corporation to other funds or accounts of the [~~agency~~]
696 corporation to the extent that the transfer does not reduce the amount of the fund to below the
697 [~~said~~] capital reserve fund requirement.

698 (c) The [~~agency~~] corporation may provide by resolution or resolutions that it [~~shall~~] may
699 not issue bonds under a resolution or resolutions at any time if upon issuance the amount in the
700 capital reserve fund which will secure the bonds shall be less than [~~said~~] the capital reserve fund
701 requirement, unless the [~~agency~~] corporation at the time of issuance of the bonds shall deposit in
702 the fund from the proceeds of the bonds to be so issued, or other sources, an amount which,
703 together with the amount then in the fund, shall not be less than [~~said~~] the capital reserve fund
704 requirement.

705 (d) In computing the amount of the capital reserve funds for the purpose of this part,
706 securities in which all or a portion of the funds shall be invested shall be valued at par, cost, or by
707 other method of valuation as the [~~agency~~] corporation may provide by resolution.

708 (e) (i) "Capital reserve fund requirement" means, as of any particular date of computation,
709 and with respect to any particular issue of bonds, [~~such~~] an amount as the [~~agency~~] corporation

710 may provide, or may have [~~heretofore~~] previously provided, by resolution, which amount may be
711 in the form of a sum certain or a formula.

712 (ii) In establishing reserves and setting capital reserve fund requirements, the [agency]
713 corporation shall consider the following:

714 [(i)] (A) the qualifications for obtaining an investment grade rating from one or more
715 nationally recognized bond rating agencies;

716 [(ii)] (B) the economic feasibility and marketability of the bonds being issued, taking into
717 account all security for the bonds, including the capital reserve fund; and

718 [(iii)] (C) applicable requirements pertaining to reserve funds under federal and state
719 income tax laws and regulations.

720 (f) (i) To assure the continued operation and solvency of the [agency] corporation for [the]
721 carrying out of its corporate purposes, provision is made in Subsection (1)(b) for the accumulation
722 in the capital reserve funds of an amount equal to the maximum capital reserve fund requirement.

723 (ii) The [~~chairman~~] president of the [agency] corporation shall annually, on or before
724 December first, certify to the governor and to the director of finance the amount, if any, required
725 to restore the capital reserve funds to the capital reserve fund requirement.

726 (iii) The governor may request from the Legislature an appropriation of the certified
727 amount [~~so certified~~] to restore the capital reserve funds to the capital reserve fund requirement.

728 (g) Amounts appropriated, if any, shall be repaid to the General Fund of the state, from any
729 monies in excess of the amounts which the [agency] corporation determines will keep it
730 self-supporting.

731 (2) The [agency] corporation may create and establish any other funds as may be necessary
732 or desirable for its corporate purposes.

733 Section 16. Section **9-4-915** is amended to read:

734 **9-4-915. Corporation moneys -- Depositing and paying out -- Power to contract with**
735 **holders of notes and bonds -- Moneys held in trust.**

736 (1) (a) All moneys of the [agency] corporation, except as otherwise authorized or provided
737 in this part, shall be deposited as soon as practicable in a separate account or accounts in banks or
738 trust companies organized under the laws of the state or national banking association.

739 (b) The moneys in these accounts shall be paid out on checks signed by the [~~executive~~
740 director] president or other officers or employees of the [agency] corporation as the [agency]

741 corporation shall authorize.

742 (c) All deposits of moneys shall, if required by the [agency] corporation, be secured in a
743 manner as the [agency] corporation determines to be prudent, and all banks and trust companies
744 are authorized to give security for the deposits.

745 (2) (a) Notwithstanding the provisions of this section, the [agency] corporation shall have
746 power to contract with the holders of any of its notes or bonds as to the custody, collection,
747 securing, investment, and payment of any moneys of the [agency] corporation and of any moneys
748 held in trust or otherwise for the payment of notes or bonds, and to carry out [~~such~~] that contract.

749 (b) Moneys held in trust or otherwise for the payment of notes or bonds or in any way to
750 secure notes or bonds and deposits of moneys may be secured in the same manner as moneys of
751 the [agency] corporation, and all banks and trust companies are authorized to give security for the
752 deposits.

753 Section 17. Section **9-4-916** is amended to read:

754 **9-4-916. State pledge to holders of notes or bonds.**

755 (1) The state does hereby pledge to and agree with the holders of any notes or bonds issued
756 under this act that the state will not limit or alter the rights hereby vested in the [agency]
757 corporation to fulfill the terms of any agreements made with the holders thereof or in any way
758 impair the rights and remedies of the holders until the notes and bonds, together with [~~the~~] their
759 interest [~~thereon~~], with interest on any unpaid installments of interest, and all costs and expenses
760 in connection with any action or proceeding by or on behalf of the holders, are fully met and
761 discharged.

762 (2) The [agency] corporation is authorized to include this pledge and agreement of the state
763 in any agreement with the holders of the notes or bonds.

764 Section 18. Section **9-4-917** is amended to read:

765 **9-4-917. Notes, bonds, other obligations -- Not debt liability -- Expenses payable**
766 **from funds provided -- Corporation without authority to incur liability on behalf of state --**
767 **Relationship to Governmental Immunity Act.**

768 (1) (a) Notes, bonds, and other obligations issued under this part [~~shall~~] do not constitute
769 a debt or liability of this state or of any county, city, town, village, school district, or any other
770 political subdivision of the state, nor shall the notes, bonds, or other obligations constitute the
771 loaning of credit of the state or of any county, city, town, township, district, or any other political

772 subdivision of the state, nor ~~[shall]~~ may the notes, bonds, or other obligations be payable from
773 funds other than those of the ~~[agency]~~ corporation.

774 (b) All notes, bonds, or other obligations shall contain on ~~[the]~~ their face ~~[thereof]~~ a
775 statement to the effect that:

776 (i) the ~~[agency]~~ corporation is obligated to pay the ~~[same]~~ note, bond, or obligation solely
777 from the revenues or other funds of the ~~[agency and that]~~ corporation;

778 (ii) neither this state nor any political subdivision of it is obligated to pay the ~~[same]~~ note,
779 bond, or obligation; and ~~[that]~~

780 (iii) neither the faith and credit nor the taxing power of this state or any political
781 subdivision of it is pledged to the payment of principal, or redemption price of, or the interest on
782 ~~[such]~~ the notes, bonds, or other obligations.

783 (2) All expenses incurred in carrying out this act shall be payable solely from funds
784 provided under this part, and nothing in this part shall be construed to authorize the ~~[agency]~~
785 corporation to incur indebtedness or liability on behalf of or payable by this state or any political
786 subdivision of it.

787 (3) (a) Title 63, Chapter 30, the Utah Governmental Immunity Act, shall apply to the
788 corporation.

789 (b) Notwithstanding Subsection (3)(a), no claim may be brought against the state, any
790 public official or employee of the state, another public entity, or any public official or employee
791 of another public entity, based on or arising from:

792 (i) any failure or alleged failure to fulfill a contractual obligation of the corporation;

793 (ii) any act or failure to act of the corporation or any of its trustees, officers, employees,
794 agents, or representatives; or

795 (iii) any failure of the corporation to comply with the requirements of any law or
796 regulation.

797 (c) The provisions of Subsection (3)(b) do not apply to a claim of a current or former
798 officer or employee of the corporation for the retirement or insurance benefits.

799 Section 19. Section **9-4-918** is amended to read:

800 **9-4-918. Corporation property, notes, and bonds -- Tax exemption except corporate**
801 **franchise tax.**

802 All property acquired or held by the ~~[agency]~~ corporation under this part is declared to be

803 public property used for essential public and governmental purposes, and all the property, its
804 income [~~therefrom~~], and notes and bonds issued under this part, the interest payable [~~thereon~~] on
805 the notes and bonds, and income derived [~~therefrom~~] from the notes and bonds, shall at all times
806 be exempt from all taxation of every kind and nature whatsoever imposed by the state [~~of Utah~~],
807 any county, any municipality, or any other political subdivision of the state, except for the
808 corporate franchise tax.

809 Section 20. Section **9-4-919** is amended to read:

810 **9-4-919. Corporation notes, bonds, obligations -- Legal investments.**

811 (1) The notes, bonds, and other obligations issued under the authority of this part are
812 declared to be securities in which all public officers and public bodies of the state and its political
813 subdivisions, all banks, bankers, savings banks, trust companies, credit unions, savings and loan
814 associations, building and loan associations, investment companies, and other persons carrying on
815 a banking business, all insurance companies and insurance associations, and others carrying on an
816 insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries,
817 pension, profit-sharing and retirement funds, and all other persons [~~whosoever~~] who may now or
818 may [~~hereafter~~] later be authorized to invest in notes, bonds, or other obligations of the state, may
819 properly and legally invest any funds, including capital belonging to them or within their control.

820 (2) These notes, bonds, and other obligations are declared securities which may properly
821 and legally be deposited with and received by any state, county, or municipal officer, or agency of
822 the state for any purpose for which the deposit of notes, bonds, or other obligations of the state is
823 now or may [~~hereafter~~] later be authorized by law.

824 Section 21. Section **9-4-920** is amended to read:

825 **9-4-920. Annual report to governor and Legislature -- Contents -- Audits.**

826 (1) (a) The [~~agency~~] corporation shall, following the close of each fiscal year, submit an
827 annual report of its activities for the preceding year to the governor and the Legislature.

828 (b) Each report shall set forth a complete operating and financial statement of the [~~agency~~]
829 corporation during the fiscal year it covers. [~~The state auditor shall at~~]

830 (c) At least once [in] each year, an independent certified public accountant shall audit the
831 books and accounts of the [agency or, if he elects, he shall contract with a nationally recognized
832 independent certified public accountant for this audit] corporation. [~~The agency shall reimburse~~
833 ~~the state auditor from available monies of the agency for the actual and necessary costs of that~~

834 audit.]

835 (d) A complete copy of each annual audit report shall be:

836 (i) included in the report to the governor and the Legislature under Subsection (2); and

837 (ii) available for public inspection at the corporation's office.

838 (2) The [agency] corporation shall, each fiscal year, submit a budget of its operations to
839 the Legislature and the governor.

840 (3) (a) The corporation shall form an audit committee consisting of no less than three
841 trustees.

842 (b) The audit committee shall have exclusive authority to select and engage the
843 independent certified public accountant to audit the corporation and to supervise the audit.

844 (4) The corporation shall provide additional information when requested by the governor,
845 the Legislature, a legislative committee, the legislative auditor general, or the state auditor.

846 Section 22. Section **9-4-922** is amended to read:

847 **9-4-922. Act not restriction on powers of corporation -- Construed as alternative --**

848 **Bonds, notes, obligations issued need not comply with other laws.**

849 [Neither this] (1) This part [~~nor anything contained herein~~] and its contents is not or [shall]
850 may not be construed as a restriction or limitation upon any other powers which the [agency]
851 corporation might otherwise have under any other law of this state, and this part is cumulative to
852 [~~such~~] those powers.

853 (2) This part does and shall be construed to provide a complete, additional, and alternative
854 method for the doing of the things authorized [~~thereby~~] in this part and shall be regarded as
855 supplemental and additional to powers conferred by other laws. [~~However, the~~]

856 (3) The issuance of bonds, notes, and other obligations under the provisions of this part
857 need not comply with the requirements of any other state law applicable to the issuance of bonds,
858 notes, and other obligations. [~~No proceedings~~]

859 (4) Proceedings, notice, or approval [~~shall be~~] are not required for the issuance of any
860 bonds, notes, and other obligations or any instrument as security therefor, except as provided in
861 this part.

862 Section 23. Section **9-4-923** is amended to read:

863 **9-4-923. Allocation to corporation of mortgage bonds qualified under Internal**
864 **Revenue Code.**

865 (1) The entire amount of qualified mortgage bonds allowable to Utah pursuant to 26
 866 U.S.C., Section 143, and the regulations issued under the code, is allocated to the Utah Housing
 867 [~~Finance Agency~~] Corporation which, for purposes of 26 U.S.C., Section 143 and the regulations
 868 under that section, has sole responsibility for issuing or approving the issuance of qualified
 869 mortgage bonds allowable to Utah.

870 (2) The [~~agency~~] corporation is not required to issue or approve the issuance of qualified
 871 mortgage bonds equal in amount to the amount allowed Utah.

872 (3) Housing authorities in counties, cities, and towns in Utah may apply under 26 U.S.C.,
 873 Section 143 to the [~~agency~~] corporation for funding of housing programs within their respective
 874 jurisdictions.

875 Section 24. Section **9-4-924** is amended to read:

876 **9-4-924. Allocation of qualified mortgage bonds to counties, cities, and towns.**

877 (1) (a) The [~~agency~~] corporation is authorized to allocate all or part of the amount to one
 878 or more counties, cities, and towns within the state or to any authority or agency of any such
 879 entities that is authorized to issue qualified mortgage bonds. [~~No~~]

880 (b) An allocation may not be made under this section[~~, however,~~] unless the entity applies
 881 to the [~~agency~~] corporation for an allocation and the [~~agency~~] corporation finds that the proposed
 882 allocation would be in the best interest of [~~Utah~~] the state.

883 (c) The [~~agency~~] corporation shall take the following factors into consideration before
 884 making its finding:

885 [~~(a)~~] (i) the number of "low and moderate income persons," within the meaning of the Utah
 886 Housing [~~Finance Agency~~] Corporation Act, within a given area;

887 [~~(b)~~] (ii) the likelihood that the proposed issuing entity would use the allocation to issue
 888 qualified mortgage bonds in a timely manner;

889 [~~(c)~~] (iii) the cost to the proposed issuing entity to issue the bonds relative to the cost to
 890 the [~~agency~~] corporation to issue [~~such~~] the bonds;

891 [~~(d)~~] (iv) any special costs or benefits which would result from the issuance of such bonds
 892 by the proposed issuing entity;

893 [~~(e)~~] (v) the capability of the proposed issuing entity to administer an issuance of qualified
 894 mortgage bonds;

895 [~~(f)~~] (vi) the needs of the proposed issuing entity relative to the needs of other counties,

896 cities, and towns;

897 ~~[(g)]~~ (vii) the effects of the proposed allocation on counties, cities, and towns which are
898 not served by the proposed issuing entity; and

899 ~~[(h)]~~ (viii) any other factors the ~~[agency deems]~~ corporation considers relevant to a
900 determination of what is in the best interest of Utah with regard to single family housing.

901 (2) (a) The ~~[agency]~~ corporation shall specify the time within which an issuing entity must
902 use the allocation.

903 (b) Any part of the allocation which is not used within the time prescribed automatically
904 terminates.

905 (c) The ~~[agency from time to time]~~ corporation may~~[-, however,]~~ extend the time initially
906 prescribed for use of the allocation.

907 Section 25. Section **9-4-925** is amended to read:

908 **9-4-925. Low-income housing tax credits.**

909 (1) The ~~[agency]~~ corporation is designated the "Housing Credit Agency" for the state
910 within the meaning of 26 U.S.C. Sec. 42(h) and for the purposes of carrying out 26 U.S.C. Sec.
911 42 and any regulations promulgated under that section.

912 (2) The entire state housing credit ceiling for each calendar year is allocated to the ~~[agency]~~
913 corporation.

914 (3) The allocation of the state housing credit ceiling shall be made under the state's
915 ~~["]~~qualified allocation plan~~["]~~ within the meaning of 26 U.S.C. Sec. 42(m), as amended, and as
916 provided in Subsection (4).

917 (4) The ~~[agency]~~ corporation may amend the state's qualified allocation plan as necessary
918 to comply with revisions to the low-income housing tax credit program under 26 U.S.C. Sec. 42,
919 or as may be necessary to further the goals and purposes of the low-income housing tax credit
920 program for the state.

921 (5) The ~~[agency]~~ corporation, or a subsidiary of the ~~[agency]~~ corporation, may have a
922 direct or indirect ownership interest in, and may materially participate in the operation and
923 management of, a housing development or program that has received an allocation of the state
924 housing credit ceiling.

925 Section 26. Section **9-4-926** is enacted to read:

926 **9-4-926. Asset disposition upon dissolution of corporation.**

927 Upon dissolution of the corporation:
928 (1) all liabilities and obligations of the corporation, including obligations to bondholders,
929 shall be paid, satisfied, discharged, or adequately provided for; and
930 (2) all remaining funds, property, rights, claims, and interests of the corporation shall
931 revert or be conveyed to the state.
932 Section 27. **Repealer.**
933 This act repeals:
934 Section **9-4-921, State grants.**
935 Section 28. **Effective date.**
936 This act takes effect on July 1, 2001.

Legislative Review Note
as of 1-31-01 12:09 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel