

1 **CHARTER SCHOOL CAPITAL FACILITIES**

2 **LOANS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: James A. Ferrin**

6 **This act modifies provisions related to the State System of Public Education Code and**
7 **Bonding Code by authorizing the issuance and sale of general obligation bonds by the**
8 **State Bonding Commission for capital facilities for charter schools. This act specifies the**
9 **use of bond proceeds and the manner of issuance. This act imposes and abates a**
10 **property tax and creates a sinking fund. This act creates the Charter School Building**
11 **Board and a revolving loan fund known as the Charter School Fund and authorizes the**
12 **board to make loans from the fund to charter schools for capital facilities. This act**
13 **directs the Charter School Building Board to make rules.**

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

15 AMENDS:

16 **63A-3-205**, as last amended by Chapter 135, Laws of Utah 1996

17 ENACTS:

18 **53A-1a-517**, Utah Code Annotated 1953

19 **53A-1a-518**, Utah Code Annotated 1953

20 **63B-12-101**, Utah Code Annotated 1953

21 **63B-12-102**, Utah Code Annotated 1953

22 **63B-12-103**, Utah Code Annotated 1953

23 **63B-12-104**, Utah Code Annotated 1953

24 **63B-12-105**, Utah Code Annotated 1953

25 **63B-12-106**, Utah Code Annotated 1953

26 **63B-12-107**, Utah Code Annotated 1953

27 **63B-12-108**, Utah Code Annotated 1953



- 28 **63B-12-109**, Utah Code Annotated 1953
- 29 **63B-12-110**, Utah Code Annotated 1953
- 30 **63B-12-111**, Utah Code Annotated 1953
- 31 **63B-12-112**, Utah Code Annotated 1953
- 32 **63B-12-113**, Utah Code Annotated 1953
- 33 **63B-12-114**, Utah Code Annotated 1953
- 34 **63B-12-115**, Utah Code Annotated 1953
- 35 **63B-12-116**, Utah Code Annotated 1953
- 36 **63B-12-117**, Utah Code Annotated 1953

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

38 Section 1. Section **53A-1a-517** is enacted to read:

39 **53A-1a-517. Charter School Building Board.**

40 (1) There is created the Charter School Building Board to provide financial assistance
41 to charter schools for the acquisition of capital facilities.

42 (2) (a) The board shall consist of five members appointed by the governor with the
43 consent of the Senate.

44 (b) The members of the board shall have expertise or experience in at least one of the
45 following areas:

46 (i) business or economics, including knowledge of finance or real estate;

47 (ii) charter school administration; or

48 (iii) public school administration.

49 (c) The term of office of board members shall be four years, except of the members
50 first appointed to the board, the initial term of two members shall be two years.

51 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
52 appointed for the unexpired term.

53 (e) The board shall elect a chair from its membership.

54 (f) The board shall meet upon the call of the chair or three board members.

55 (g) Three members of the board constitutes a quorum for the conduct of business.

56 (3) The state superintendent of public instruction shall provide staff support to the
57 board.

58 (4) The board may make loans to charter schools from the Charter School Fund created

59 in Section 53A-1a-518 to pay for the costs of constructing or renovating charter school
60 buildings.

61 (5) The board shall:

62 (a) determine the amount, term, and interest rate for each loan made under this section;

63 (b) assure that adequate security is obtained for each loan;

64 (c) establish a maximum loan amount, which may not exceed \$5,000 multiplied by the
65 enrollment capacity of the building to be constructed or renovated;

66 (d) charge fees for loan origination costs;

67 (e) establish criteria and procedures for applying for and awarding loans; and

68 (f) make rules to implement this section in accordance with Title 63, Chapter 46a, Utah
69 Administrative Rulemaking Act.

70 (6) (a) (i) Members who are not government employees shall receive no compensation
71 or benefits for their services, but may receive per diem and expenses incurred in the
72 performance of the member's official duties at the rates established by the Division of Finance
73 under Sections 63A-3-106 and 63A-3-107.

74 (ii) Members may decline to receive per diem and expenses for their service.

75 (b) (i) State government, higher education, and local government officer and employee
76 members who do not receive salary, per diem, or expenses from their agency or institution for
77 their service on the board may receive per diem and expenses incurred in the performance of
78 their official duties from the board at the rates established by the Division of Finance under
79 Sections 63A-3-106 and 63A-3-107.

80 (ii) State government, higher education, and local government officer and employee
81 members may decline to receive per diem and expenses for their service.

82 Section 2. Section **53A-1a-518** is enacted to read:

83 **53A-1a-518. Charter School Fund -- Contents -- Use and investment of fund**
84 **monies.**

85 (1) There is created an enterprise fund known as the Charter School Fund.

86 (2) The Charter School Fund shall consist of:

87 (a) the proceeds of general obligation bonds issued under Title 63B, Bonds;

88 (b) money appropriated to the fund by the Legislature;

89 (c) money received for the repayment of loans made from the fund; and

90 (d) interest earned on the fund.

91 (3) The Charter School Building Board shall make loans from the Charter School Fund
92 as provided in Section 53A-1a-517.

93 (4) The Division of Finance:

94 (a) shall be responsible for the care, custody, safekeeping, and collection of, and the
95 accounting for, loans made by the Charter School Building Board from the Charter School
96 Fund; and

97 (b) may charge the fund the administrative costs incurred in discharging the
98 responsibilities imposed by Subsection (4)(a).

99 (5) The state treasurer shall invest the money in the Charter School Fund by following
100 the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

101 Section 3. Section **63A-3-205** is amended to read:

102 **63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.**

103 (1) As used in this section, "revolving loan fund" means:

104 (a) the Water Resources Conservation and Development Fund, created in Section
105 73-10-24;

106 (b) the Water Resources Construction Fund, created in Section 73-10-8;

107 (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

108 (d) the Clean Fuel Conversion Funds, created in Title 9, Chapter 1, Part 7, Clean Fuels
109 Conversion Program Act;

110 (e) the Water Development Security Account and its subaccounts created in Section
111 73-10c-5;

112 (f) the Agriculture Resource Development Fund, created in Section 4-18-6;

113 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

114 (h) the Permanent Community Impact Fund, created in Section 9-4-303;

115 (i) the Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3;

116 (j) the Uintah Basin Revitalization Fund, created in Section 9-10-102; [~~and~~]

117 (k) the Navajo Revitalization Fund, created in Section 9-11-104[-]; and

118 (l) the Charter School Fund, created in Section 53A-1a-518.

119 (2) The division shall for each revolving loan fund:

120 (a) make rules establishing standards and procedures governing:

- 121 (i) payment schedules and due dates;
- 122 (ii) interest rate effective dates;
- 123 (iii) loan documentation requirements; and
- 124 (iv) interest rate calculation requirements; and
- 125 (b) make an annual report to the Legislature containing:
- 126 (i) the total dollars loaned by that fund during the last fiscal year;
- 127 (ii) a listing of each loan currently more than 90 days delinquent, in default, or that was
- 128 restructured during the last fiscal year;
- 129 (iii) a description of each project that received money from that revolving loan fund;
- 130 (iv) the amount of each loan made to that project;
- 131 (v) the specific purpose for which the proceeds of the loan were to be used, if any;
- 132 (vi) any restrictions on the use of the loan proceeds;
- 133 (vii) the present value of each loan at the end of the fiscal year calculated using the
- 134 interest rate paid by the state on the bonds providing the revenue on which the loan is based or,
- 135 if that is unknown, on the average interest rate paid by the state on general obligation bonds
- 136 issued during the most recent fiscal year in which bonds were sold; and
- 137 (viii) the financial position of each revolving loan fund, including the fund's cash
- 138 investments, cash forecasts, and equity position.

139 Section 4. Section **63B-12-101** is enacted to read:

140 **63B-12-101. State Bonding Commission authorized to issue general obligation**

141 **bonds.**

142 The commission created under Section 63B-1-201 may issue and sell general obligation

143 bonds of the state pledging the full faith, credit, and resources of the state for the payment of

144 the principal of and interest on the bonds, to provide funds to the Charter School Building

145 Board created in Section 53A-1a-517.

146 Section 5. Section **63B-12-102** is enacted to read:

147 **63B-12-102. Maximum amount -- Projects authorized.**

148 (1) The total amount of bonds issued under this part may not exceed \$20,000,000.

149 (2) (a) Proceeds from the issuance of bonds shall be provided to the Charter School

150 Building Board to provide loans to charter schools to pay the costs of constructing and

151 renovating charter schools.

152 (b) These costs may include the cost of acquiring land, interests in land, easements and
 153 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 154 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 155 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 156 covered by construction of the projects plus a period of six months after the end of the
 157 construction period, and all related engineering, architectural, and legal fees.

158 (3) The commission or the state treasurer may make any statement of intent relating to
 159 a reimbursement that is necessary or desirable to comply with federal tax law.

160 (4) The Charter School Building Board may enter into agreements related to a loan
 161 before the receipt of proceeds of bonds issued under this chapter.

162 Section 6. Section **63B-12-103** is enacted to read:

163 **63B-12-103. Bond proceeds may be used to pay costs of issuance and sale.**

164 The proceeds of bonds issued under this chapter shall be used for the purposes
 165 described in Section 63B-12-102 and to pay all or part of any cost incident to the issuance and
 166 sale of the bonds including, without limitation, printing, registration and transfer costs, legal
 167 fees, trustees' fees, financial advisors' fees, and underwriters' discount.

168 Section 7. Section **63B-12-104** is enacted to read:

169 **63B-12-104. Manner of issuance -- Amounts, interest, and maturity.**

170 (1) Bonds issued under this chapter may be authorized, sold, and issued at times and in
 171 a manner determined by the commission by resolution.

172 (2) Bonds may be issued in one or more series, in amounts, and shall bear dates,
 173 interest rates, including a variable rate, and maturity dates as the commission determines by
 174 resolution.

175 (3) A bond issued may not mature later than 15 years after the dated date of the bonds.

176 Section 8. Section **63B-12-105** is enacted to read:

177 **63B-12-105. Terms and conditions of sale -- Plan of financing -- Signatures --**
 178 **Replacement -- Registration -- Federal rebate.**

179 (1) In the issuance of bonds, the commission may determine by resolution:

180 (a) the manner of sale, including public or private sale;

181 (b) the terms and conditions of sale, including price, whether at, below, or above face
 182 value;

183 (c) denominations;

184 (d) form;

185 (e) manner of execution;

186 (f) manner of authentication;

187 (g) place and medium of purchase;

188 (h) redemption terms; and

189 (i) other provisions and details it considers appropriate.

190 (2) The commission may, by resolution, adopt a plan of financing, which may include
191 terms and conditions of arrangements entered into by the commission on behalf of the state
192 with financial and other institutions for letters of credit, standby letters of credit,
193 reimbursement agreements, and remarketing, indexing, and tender agent agreements to secure
194 the bonds, including payment from any legally available source of fees, charges, or other
195 amounts coming due under the agreements entered into by the commission.

196 (3) (a) Any signature of a public official authorized by resolution of the commission to
197 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
198 otherwise placed on the bonds.

199 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
200 shall be made for a manual authenticating signature on the bonds by or on behalf of a
201 designated authentication agent.

202 (c) If an official ceases to hold office before delivery of the bonds signed by that
203 official, the signature or facsimile signature of the official is nevertheless valid for all purposes.

204 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
205 placed on the bonds.

206 (4) (a) The commission may enact resolutions providing for the replacement of lost,
207 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
208 or larger denominations.

209 (b) Bonds in changed denominations shall:

210 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
211 manner that prevents the duplication of interest; and

212 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
213 practicable in the form of the original bonds.

214 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
215 entry form under which the right to principal and interest may be transferred only through a
216 book entry.

217 (b) The commission may provide for the services and payment for the services of one
218 or more financial institutions or other entities or persons, or nominees, within or outside the
219 state, for the authentication, registration, transfer, including record, bookkeeping, or book entry
220 functions, exchange, and payment of the bonds.

221 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
222 persons to whom payment with respect to the obligations is made, are private records as
223 provided in Section 63-2-302, or protected records as provided in Section 63-2-304.

224 (d) The bonds and any evidences of participation interest in the bonds may be issued,
225 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
226 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
227 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
228 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

229 (6) The commission may:

230 (a) by resolution, provide for payment to the United States of whatever amounts are
231 necessary to comply with Section 148(f) of the Internal Revenue Code of 1986, as amended;
232 and

233 (b) enter into agreements with financial and other institutions and attorneys to provide
234 for:

235 (i) the calculation, holding, and payment of those amounts; and

236 (ii) payment from any legally available source of fees, charges, or other amounts
237 coming due under any agreements entered into by the commission.

238 Section 9. Section **63B-12-106** is enacted to read:

239 **63B-12-106. Constitutional debt limitation.**

240 (1) The commission may not issue bonds under this chapter in an amount that violates
241 the limitation described in Utah Constitution Article XIV, Section 1.

242 (2) For purposes of applying the debt limitation contained in Utah Constitution Article
243 XIV, Section 1, the value of the taxable property in Utah is considered to be 100% of the fair
244 market value of the taxable property of the state, including fee-in-lieu property, as computed

245 from the last assessment for state purposes previous to the issuance of the bonds.

246 Section 10. Section **63B-12-107** is enacted to read:

247 **63B-12-107. Tax levy -- Abatement of tax.**

248 (1) Each year after issuance of the bonds and until all outstanding bonds are retired,
249 there is levied a direct annual tax on all real and personal property within the state subject to
250 state taxation, sufficient to pay:

251 (a) applicable bond redemption premiums, if any;

252 (b) interest on the bonds as it becomes due; and

253 (c) principal of the bonds as it becomes due.

254 (2) (a) The State Tax Commission shall fix the rate of the direct annual tax levy each
255 year.

256 (b) The tax shall be collected and the proceeds applied as provided in this chapter.

257 (3) The direct annual tax imposed under this section is abated to the extent money is
258 available from sources, other than ad valorem taxes in the sinking fund, for the payment of
259 bond interest, principal, and redemption premiums.

260 Section 11. Section **63B-12-108** is enacted to read:

261 **63B-12-108. Creation of sinking fund.**

262 (1) There is created a sinking fund, to be administered by the state treasurer, entitled
263 the "2003 Charter School Bonds Sinking Fund."

264 (2) All monies deposited in the sinking fund, from whatever source, shall be used to
265 pay debt service on the bonds.

266 (3) The proceeds of all taxes levied under this chapter are appropriated to this fund.

267 (4) The state treasurer may create separate accounts within the sinking fund for each
268 series of bonds issued.

269 Section 12. Section **63B-12-109** is enacted to read:

270 **63B-12-109. Payment of interest, principal, and redemption premiums.**

271 (1) The Division of Finance shall draw warrants on the state treasury before any
272 interest, principal, or redemption premiums become due on the bonds.

273 (2) After receipt of the warrants, the state treasurer shall:

274 (a) promptly pay the warrants from funds within the sinking fund; and

275 (b) immediately transmit the amount paid to the paying agent for the bonds.

276 Section 13. Section **63B-12-110** is enacted to read:

277 **63B-12-110. Investment of sinking fund money.**

278 (1) The state treasurer may, by following the procedures and requirements of Title 51,
279 Chapter 7, State Money Management Act, invest any money contained in the sinking fund until
280 it is needed for the purposes for which the fund is created.

281 (2) Unless otherwise provided in the resolution of the commission authorizing the
282 issuance of bonds under this chapter, the treasurer shall retain all income from the investment
283 of any money contained in the sinking fund in the sinking fund and use it for the payment of
284 debt service on the bonds.

285 Section 14. Section **63B-12-111** is enacted to read:

286 **63B-12-111. Bond proceeds -- Deposits -- Investment -- Disposition of investment**
287 **income and unexpended proceeds.**

288 (1) (a) Proceeds from the sale of bonds issued under this chapter shall be deposited
289 within one or more accounts as determined by resolution of the commission.

290 (b) The state treasurer shall administer and maintain these accounts.

291 (2) (a) Subject to Subsection 53A-1a-518(5), the state treasurer shall provide for the
292 kinds of investments in which the proceeds of bonds issued under this chapter may be invested.

293 (b) Subject to Subsection 53A-1a-518(2), income from the investment of proceeds of
294 bonds issued under this chapter shall be applied as provided by resolution of the commission.

295 (3) Any unexpended bond proceeds issued under this chapter shall be deposited, upon
296 completion of the purposes for which the bonds were issued, in the sinking fund, unless
297 otherwise provided in the resolution of the commission authorizing the issuance of bonds under
298 this chapter.

299 Section 15. Section **63B-12-112** is enacted to read:

300 **63B-12-112. Refunding of bonds.**

301 (1) The commission may provide for the refunding of any of the bonds in accordance
302 with Title 11, Chapter 27, Utah Refunding Bond Act.

303 (2) For purposes of Title 11, Chapter 27, Utah Refunding Bond Act, the state is
304 considered the public body and the commission its governing body.

305 Section 16. Section **63B-12-113** is enacted to read:

306 **63B-12-113. Certification of satisfaction of conditions precedent --**

307 **Conclusiveness.**

308 (1) The commission may not issue any bond under this chapter until it finds and
309 certifies that all conditions precedent to issuance of the bonds have been satisfied.

310 (2) A recital on any bond of this finding and certification conclusively establishes the
311 completion and satisfaction of all these conditions.

312 Section 17. Section **63B-12-114** is enacted to read:

313 **63B-12-114. Tax exemption.**

314 The bonds issued under this chapter, any interest paid on the bonds, and any income
315 from the bonds are not taxable in this state for any purpose, except for the corporate franchise
316 tax.

317 Section 18. Section **63B-12-115** is enacted to read:

318 **63B-12-115. Legal investment status.**

319 Bonds issued under this chapter are legal investments for all state trust funds, insurance
320 companies, banks, trust companies, and the State School Fund and may be used as collateral to
321 secure legal obligations.

322 Section 19. Section **63B-12-116** is enacted to read:

323 **63B-12-116. Publication of resolution or notice -- Limitation on actions to contest**
324 **legality.**

325 (1) The commission may:

326 (a) publish any resolution it adopts under this chapter once in a newspaper having
327 general circulation in Utah; or

328 (b) in lieu of publishing the entire resolution, publish a notice of bonds to be issued,
329 titled as such, containing the information required by Subsection 11-14-21(3).

330 (2) (a) Any interested person, for 30 days after the date of publication, may contest:

331 (i) the legality of the resolution;

332 (ii) any of the bonds authorized under it; or

333 (iii) any of the provisions made for the security and repayment of the bonds.

334 (b) After 30 days, a person may not contest the legality of the resolution, any of the
335 bonds authorized under it, or any of the provisions made for the security and repayment of the
336 bonds for any cause.

337 Section 20. Section **63B-12-117** is enacted to read:

338 **63B-12-117. Report to Legislature.**

339 The governor shall report the commission's proceedings to each annual general session
340 of the Legislature in his budget for as long as bonds issued under this chapter remain
341 outstanding.

Legislative Review Note
as of 1-17-03 2:41 PM

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

Office of Legislative Research and General Counsel