

INTEREST RATE SWAP AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Knotwell

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends provisions related to an interest rate contract.

Highlighted Provisions:

This bill:

► requires the Utah Housing Corporation or a public treasurer to receive approval from the state treasurer when entering into an interest rate contract.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

35A-8-712, as renumbered and amended by Laws of Utah 2012, Chapter 212

51-7-17, as last amended by Laws of Utah 2014, Chapter 307

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

Section 1. Section **35A-8-712** is amended to read:

35A-8-712. Corporation -- Additional powers.

(1) To accomplish the declared purposes of this part, the corporation has the following powers:



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

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

34 (c) to make mortgage loans and provide financial assistance to housing sponsors for the
35 purpose of financing the operations of a housing development that are necessary or desirable to
36 enable the housing development to remain available as residential housing for low and
37 moderate income persons, whether or not the housing development has been financed by the
38 corporation;

39 (d) to provide financial assistance to any housing authority created under Part 4,
40 Housing Authorities, which housing authorities may enter into commitments for and accept
41 loans for a housing project as defined in Section [35A-8-401](#); and

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

44 (2) The corporation may issue bonds to purchase loans under Subsection (1)(a) only
45 after a determination by the corporation that the loans are not otherwise available upon
46 reasonably equivalent terms and conditions from private lenders.

47 (3) Loans for owner-occupied housing made under Subsection (1)(a) may not include a
48 penalty for prepayment.

49 (4) The corporation shall make rules or adopt policies and procedures to govern the
50 activities authorized under this section, including:

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

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

56 (c) the type and amount of collateral, payment bonds, performance bonds, or other
57 security to be provided for construction loans made by the corporation;

58 (d) the nature and amounts of fees to be charged by the corporation to provide for

59 expenses and reserves of the corporation;

60 (e) procedures allowing the corporation to prohibit persons who fail to comply with the
61 rules of the corporation with respect to the operations of a program of the corporation from
62 participating, either directly or indirectly, in the programs of the corporation;

63 (f) the terms and conditions under which the corporation may purchase and make
64 mortgage loans under each program of the corporation;

65 (g) the terms and conditions under which the corporation may provide financial
66 assistance under each program of the corporation;

67 (h) the terms and conditions under which the corporation may guarantee mortgage
68 loans under each program of the corporation; and

69 (i) any other matters related to the duties or exercise of powers under this section.

70 (5) (a) (i) The trustees of the corporation shall elect the directors, trustees, and
71 members, if any, of each subsidiary.

72 (ii) Service by a trustee of the corporation in any of these capacities does not constitute
73 a conflict of interest for any purpose.

74 (iii) The corporation may delegate any of its powers and duties under this part to any
75 subsidiary.

76 (iv) Subsidiaries shall constitute legal entities separate and distinct from each other, the
77 corporation, and the state.

78 (b) A note, bond, and other obligation of a subsidiary shall contain on its face a
79 statement to the effect that:

80 (i) the subsidiary is obligated to pay the note, bond, or other obligation solely from the
81 revenues or other funds of the subsidiary;

82 (ii) neither the corporation nor the state nor any of its political subdivisions is obligated
83 to pay the note, bond, or other obligation; and

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

87 (c) Upon dissolution of a subsidiary of the corporation, any assets shall revert to the
88 corporation or to a successor to the corporation or, failing this succession, to the state.

89 (6) (a) The corporation may, with the approval of the state treasurer:

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

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

93 (b) An interest rate contract may contain payment, security, default, termination,
94 remedy, and other terms and conditions that the trustees consider appropriate.

95 (c) An interest rate contract and funds used in connection with an interest rate contract
96 may not be considered a deposit or investment.

97 Section 2. Section 51-7-17 is amended to read:

98 **51-7-17. Criteria for investments.**

99 (1) As used in this section:

100 (a) "Affiliate" means, in relation to a provider:

101 (i) an entity controlled, directly or indirectly, by the provider;

102 (ii) an entity that controls, directly or indirectly, the provider; or

103 (iii) an entity directly or indirectly under common control with the provider.

104 (b) "Control" means ownership of a majority of the voting power of the entity or
105 provider.

106 (2) (a) A public treasurer shall consider and meet the following objectives when
107 depositing and investing public funds:

108 (i) safety of principal;

109 (ii) protection of principal during periods of financial market volatility;

110 (iii) need for liquidity;

111 (iv) yield on investments;

112 (v) recognition of the different investment objectives of operating and permanent
113 funds; and

114 (vi) maturity of investments, so that the maturity date of the investment does not
115 exceed the anticipated date of the expenditure of funds.

116 (b) A public treasurer shall invest the proceeds of general obligation bond issues, tax
117 anticipation note issues, and funds pledged or otherwise dedicated to the payment of interest
118 and principal of general obligation bonds and tax anticipation notes issued by the state or a
119 political subdivision of the state in accordance with:

120 (i) Section 51-7-11; or

121 (ii) the terms of the borrowing instrument applicable to those issues and funds, if those
122 terms are more restrictive than Section 51-7-11.

123 (c) A public treasurer shall invest the proceeds of bonds other than general obligation
124 bonds and the proceeds of notes other than tax anticipation notes issued by the state or a
125 political subdivision of the state, and all funds pledged or otherwise dedicated to the payment
126 of interest and principal of those notes and bonds:

127 (i) in accordance with the terms of the borrowing instruments applicable to those bonds
128 or notes; or

129 (ii) if none of those provisions are applicable, in accordance with Section 51-7-11.

130 (d) A public treasurer may invest proceeds of bonds, notes, or other money pledged or
131 otherwise dedicated to the payment of debt service on the bonds or notes in investment
132 agreements if:

133 (i) the investment is permitted by the terms of the borrowing instrument applicable to
134 those bonds or notes or the borrowing instrument authorizes the investment as an investment
135 permitted by the State Money Management Act;

136 (ii) either the provider of the investment agreement or an entity fully, unconditionally,
137 and irrevocably guaranteeing the provider's obligations under the investment agreement has
138 received a rating of:

139 (A) at least "AA-" from S&P or "Aa3" from Moody's for investment agreements
140 having a term of more than one year; or

141 (B) at least "A-1+" from S&P or "P-1" from Moody's for investment agreements
142 having a term of one year or less;

143 (iii) the investment agreement contains provisions approved by the public treasurer that
144 provide that, in the event of a rating downgrade of the provider or its affiliate guarantor, as
145 applicable, by either S&P or Moody's below the "A" category or its equivalent, or a rating
146 downgrade of a nonaffiliate guarantor by either S&P or Moody's below the "AA" category or
147 its equivalent, the provider must, within 30 days after receipt of notice of the downgrade:

148 (A) collateralize the investment agreement with direct obligations of, or obligations
149 guaranteed by, the United States of America having a market value at least equal to 105% of
150 the amount of the money invested, valued at least quarterly, and deposit the collateral with a
151 third-party custodian or trustee selected by the public treasurer; or

152 (B) terminate the agreement without penalty and repay all of the principal invested and
153 the interest accrued on the investment to the date of termination; and

154 (iv) the public treasurer receives an enforceability opinion from the legal counsel of the
155 investment agreement provider and, if there is a guarantee, an enforceability opinion from the
156 legal counsel of the guarantor with respect to the guarantee.

157 (3) (a) As used in this Subsection (3), "interest rate contract" means interest rate
158 exchange contracts, interest rate floor contracts, interest rate ceiling contracts, or other similar
159 contracts authorized by resolution of the governing board or issuing authority, as applicable.

160 (b) A public treasurer may, with the approval of the state treasurer:

161 (i) enter into interest rate contracts that the governing board or issuing authority
162 determines are necessary, convenient, or appropriate for the control or management of debt or
163 for the cost of servicing debt; and

164 (ii) use its public funds to satisfy its payment obligations under those contracts.

165 (c) Those contracts:

166 (i) shall comply with the requirements established by council rules; and

167 (ii) may contain payment, security, default, termination, remedy, and other terms and
168 conditions that the governing board or issuing authority considers appropriate.

169 (d) Neither interest rate contracts nor public funds used in connection with these
170 interest rate contracts may be considered a deposit or investment.

171 (4) A public treasurer shall ensure that all public funds invested in deposit instruments
172 are invested with qualified depositories within Utah, except:

173 (a) for deposits made in accordance with Section 53B-7-601 in a foreign depository
174 institution as defined in Section 7-1-103;

175 (b) reciprocal deposits, subject to rules made by the council under Subsection
176 51-7-18(2); or

177 (c) if national market rates on instruments of similar quality and term exceed those
178 offered by qualified depositories, investments in out-of-state deposit instruments may be made
179 only with institutions that meet quality criteria set forth by the rules of the council.

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Office of Legislative Research and General Counsel