

Chapter 13

Higher Education Loan Act

53B-13-101 Short title of chapter.

This chapter is known as the "Higher Education Loan Act."

Enacted by Chapter 167, 1987 General Session

53B-13-102 Definitions.

As used in this chapter:

- (1) "Bonds" means the bonds authorized to be issued by the board under this chapter, and may consist of bonds, notes, or debt obligations evidencing an obligation to repay borrowed money and payable solely from revenues and other money of the board pledged for repayment.
- (2) "Eligible borrower" means a person, or the parent of a person, who is eligible to borrow under regulations applicable to the student loan program.
- (3) "Eligible institution" means an institution which is approved by the board and the United States Secretary of Education for purposes of the guaranteed loan program.
- (4) "Obligations" means student loan notes and other debt obligations reflecting loans to students which the board may take, acquire, buy, sell, or endorse under this chapter, and may include a direct or indirect interest in the whole or any part of the notes or obligations.
- (5) "Resolution," when used in relation to the issuance of bonds, means the resolution or trust agreement securing the bonds.
- (6) "Student" means a person who, under rules promulgated by the board, is enrolled or accepted for enrollment at an eligible institution and who is making suitable progress in his education toward obtaining a degree or other appropriate certification in accordance with standards acceptable to the board.

Enacted by Chapter 167, 1987 General Session

53B-13-103 Powers of Board of Regents.

The board has the powers necessary to carry out the purposes of this chapter, including the following:

- (1) to accept gifts, grants, loans, and other aids or amounts from a person, corporation, or governmental agency;
- (2) to loan money to eligible borrowers to assist them in obtaining a post-high school education by attending an eligible institution, including refinancing or consolidating obligations previously incurred by eligible borrowers with other lending sources for this purpose and participating in loans to eligible borrowers for this purpose with other lending sources;
- (3) to acquire, purchase, or make commitments to purchase, and take assignments from lenders of obligations. No obligation is eligible for acquisition, purchase, or commitment to purchase by the board unless at or before the time of transfer to the board the lender certifies either: (a) that, under and to the extent required by rules and regulations of the board, the proceeds of sale or its equivalent shall be reinvested in other obligations under the student loan program; or (b) that the obligation was made in anticipation of its sale to the board under rules and regulations of the board promulgated under this chapter;
- (4) to enforce its rights under a contract or agreement including the commencement of court action;

- (5) to acquire, hold, and dispose of real and personal property necessary for the accomplishment of the purposes of this chapter;
- (6) to obtain insurance against losses which may be incurred in connection with its property, assets, activities, or the exercise of the powers granted under this chapter;
- (7) to borrow money and to issue its bonds and provide for the rights of bondholders and to secure the bonds by assignment, pledge, or granting a security interest in its property including all or a part of an obligation. The state is not liable for the repayment of bonds issued by the board. The bonds issued by the board are not a debt of the state, and each bond shall contain on its face a statement to this effect;
- (8) to invest funds not required for immediate use or disbursement as provided in the State Money Management Act;
- (9) subject to a contract with the holders of its bonds, an applicable bond resolution, or a contract with the recipient of a loan, to consent to the modification, with respect to security, rate of interest, time of payment of interest or principal, or other term of a bond contract or agreement between the board and a recipient of a loan, bondholder, or agency or institution guaranteeing the repayment of an obligation;
- (10) to engage and appoint officers, agents, employees, and other private consultants to render and perform professional and technical duties, assistance, and advice in carrying out the purposes of this chapter, to describe their duties, and to fix the amount and source of their compensation;
- (11) to make rules and regulations governing the activities authorized under this chapter;
- (12) to solicit grants and contributions from the public or from any government or governmental agency and to arrange for the guaranteeing of the repayment of obligations by other agencies of this state or the United States;
- (13) to collect fees and charges in connection with its loans, commitments, and servicing, including reimbursement of the costs of financing, service charges, and insurance premiums which are determined as reasonable and are approved by the board;
- (14) to sell obligations held by the board at such prices and at such times as it may determine, when that sale would not impair the rights or interests of holders of bonds issued by the board; and
- (15) to participate in federal programs supporting loans to eligible borrowers and to agree to, and comply with, the conditions of those programs.

Enacted by Chapter 167, 1987 General Session

53B-13-104 Issuance of bonds -- Disposition of funds -- Refunding bonds -- Resolution to authorize bonds -- Contents -- Sale of bonds -- Bond debt service reserve funds -- Restoration of fund assets -- Establishment of other subfunds.

- (1) The board may issue its bonds in the principal amounts necessary to provide funds for achieving its purposes under this chapter, including the payment of interest, the establishment of reserves to secure the bonds, and other expenditures of the board necessary to carry out its purposes and powers.
- (2) The board may issue refunding bonds when it considers refunding expedient, whether the bonds to be refunded have or have not matured.
- (3) The proceeds of the refunding bonds shall be applied to the purchase, redemption, or payment of the bonds refunded.
- (4) Except as otherwise expressly provided in a resolution authorizing bonds, an issue of bonds is a special obligation of the board to be satisfied only out of revenue or money of the board,

subject to an agreement with the holders of particular receipts or revenues of the board which have been pledged.

- (5) The board shall authorize its bonds by resolution.
- (6) The bonds are fully negotiable for all purposes, shall bear a date, shall be serial bonds or term bonds or both and, if serial bonds, shall be payable either semiannually or annually, and shall mature at a time or times, not exceeding 40 years after the date of issue, as provided in the resolution.
- (7) The resolution shall specify the following:
 - (a) either the interest rate or rates or a formula by means of which the interest rate or rates are determined during the time the bonds are outstanding;
 - (b) denomination and form, either coupon or registered;
 - (c) registration privileges;
 - (d) manner of execution;
 - (e) medium of payment; and
 - (f) place and terms for the redemption of the bonds.
- (8) If the resolution sets forth a formula by means of which the interest rate or rates on the bonds are determined, it shall also state the maximum rate which the bonds may bear under the formula.
- (9) Pursuant to the resolution or another instrument, the board may delegate to the chair, vice-chair, or chair of the Budget and Finance Subcommittee the authority:
 - (a) to approve any changes with respect to interest rate, price, amount, redemption features, and other terms of the bonds as are within reasonable parameters set forth in the resolution; and
 - (b) to approve and execute all documents relating to the issuance of the bonds.
- (10) The bonds are sold by the board in such manner and at such a price as the board determines.
- (11)
 - (a) The board may create and establish one or more bond debt service reserve funds in order to secure its bonds from the following:
 - (i) any proceeds of the sale of bonds, to the extent provided in the resolution authorizing the issuance of the bonds;
 - (ii) any money appropriated and made available by the state for the purpose of the funds; and
 - (iii) any other money available to the board for the purpose of the funds.
 - (b) All money held in any bond debt service reserve fund shall be used, as provided in the resolution establishing the fund, to pay principal of, premium, and interest on bonds of the board issued under this chapter.
 - (c) If the assets in any bond debt service reserve fund are less than the amount currently required in the authorizing resolution to be on deposit, the chairman of the board shall, annually before the second day of December, certify to the governor and to the director of finance the amount necessary to restore the assets of the funds to the required amount.
 - (d) The governor may request from the Legislature an appropriation of the certified amount in order to restore the required amount to the funds.
- (12) The board may create and establish any other subfunds and accounts as may be necessary for its corporate purposes.

Amended by Chapter 271, 1992 General Session

53B-13-105 Agreements with bondholders unalterable.

- (1) Neither limitations or alterations of the rights vested in the board to fulfill the terms of an agreement made with bondholders nor impairment of the rights and remedies of those bondholders may occur until:
 - (a) the bonds, together with interest on the bonds and interest on unpaid installments of interest are met and discharged; and
 - (b) all costs and expenses in connection with an action or proceeding by or on behalf of those bondholders are met and discharged.
- (2) The board may include provisions to this effect in an agreement with the holders of the bonds.

Enacted by Chapter 167, 1987 General Session

53B-13-106 Investments in bonds of the board.

The bonds of the board are securities, in which public officers and bodies of this state, municipalities and municipal subdivisions, insurance companies and associations, persons carrying on an insurance business, banks, trust companies, savings banks and savings associations, saving and loan associations, investment companies, administrators, guardians, executors, trustees, other fiduciaries, and all other persons who are authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

Enacted by Chapter 167, 1987 General Session

53B-13-107 Payment of funds -- Payment on warrants -- Contracts with bondholders -- Security.

- (1) The funds of the board, except as otherwise authorized or provided in this section, are paid to the state treasurer.
- (2) The money in the accounts is paid out on warrants signed by the State Division of Finance on requisition of the chairman of the board or of a board authorized officer or employee.
- (3) The board, subject to the approval of the state treasurer, may contract with the holders of its bonds as to the custody, collection, securing, investment, and payment of money of the board or of money held in trust or otherwise for the payment of bonds.
- (4) Money held in trust or otherwise for the payment of bonds or to secure bonds and deposits of the money may be secured in the same manner as money of the board.
- (5) Banks and trust companies are authorized to give such security for the deposits.

Amended by Chapter 342, 2011 General Session

53B-13-108 Bonds and interest exempt from taxation except corporate franchise tax.

The bonds issued under this chapter and the interest on the bonds are exempt from all taxation in this state, except for the corporate franchise tax.

Enacted by Chapter 167, 1987 General Session

53B-13-109 Board pledges -- Attachment of lien -- Recording unnecessary.

- (1) A pledge made by the board is valid and binding from the time the pledge is made.
- (2) The money or property pledged and subsequently received by the board is immediately subject to the lien of the pledge without physical delivery or further act.

- (3) The lien of the pledge is valid and binding against all parties having a claim in tort, contract, or otherwise against the board, irrespective of whether the parties have notice of the claim.
- (4) Neither the resolution nor another instrument by which a pledge is created need be recorded.

Enacted by Chapter 167, 1987 General Session

53B-13-110 Default by board -- Appointment of a trustee -- Powers of the trustee and bondholders.

- (1) If the board defaults in the payment of principal of or interest on an issue of bonds after the issue becomes due, whether at maturity or upon call for redemption, and the default continues for 30 days, or if the board fails or refuses to comply with this chapter, or defaults in an agreement made with the holders of an issue of bonds, the holders of 25% of the aggregate principal amount of the bonds of the issue then outstanding, may appoint a trustee to represent all holders of that issue of bonds for the purposes provided in this section.
- (2) The trustee may, and upon written request of the holders of 25% of the aggregate principal amount of the bonds of the issue then outstanding shall, in his own name by action or proceeding enforce all rights of the bondholders including the following:
 - (a) bringing an action to require the board to collect fees, charges, interest, and amortization payments of loans made by it adequate to carry out the agreement as to, or pledge of, the fees, charges, interest, and amortization payment on the loans and other properties;
 - (b) bringing an action to require the board to carry out other agreements with the holders of the bonds and to perform its duties under this chapter;
 - (c) bringing an action upon the bonds; or
 - (d) bringing an action to require the board to account as if it were the trustee of an express trust for the holders of the bonds due and payable, and if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the issue of bonds then outstanding, to annul the declaration and its consequences.
- (3) The holders of bonds and the trustee authorized by this section shall have all of the rights to which they are entitled by virtue of provisions included in the bonds or otherwise available to them under law.

Enacted by Chapter 167, 1987 General Session

53B-13-111 Loans or purchase of obligations -- Rules -- Options -- Repayment of federally insured loans.

- (1) The board may purchase obligations from lenders or make loans to eligible borrowers, out of money available to the board for loans. The board shall promulgate rules for determining the needs of the respective borrowers for loans and for the purpose of making loans or purchasing obligations. The amount of an obligation purchased by the board or of a loan made by the board to an eligible borrower, whether enrolled or to be enrolled in a private institution or a tax-supported public institution, is determined by the board upon the basis of substantially similar standards and guides set forth in the board's rules. The board, in determining the needs of eligible borrowers for guaranteed loans, may consider the amount of assistance available to the students.
- (2) When the board purchases an obligation or makes a loan, and again immediately before a repayment schedule on the loan or obligation is signed by the borrower, the board shall cause a written statement to be delivered to the borrower describing in detail whether an option exists

and, if so, who may exercise the option, under what conditions the option may be exercised, and what options are available relating to the following:

- (a) the term of the loan;
 - (b) the repayment period on the loan;
 - (c) an extension of the term or repayment period on the loan and the conditions of repayment under the extension;
 - (d) a deferment or forbearance on the repayment of the loan or on interest accruing on the loan, whether interest is to be paid during the deferment or forbearance, and the terms of repayment after the deferment or forbearance;
 - (e) the period of time between installment payments on the loan and whether graduated or unequal installment payments may be made;
 - (f) the minimum annual payment on the loan, and if more than one loan is taken from the board or if the borrower takes or has taken an educational loan from another source, the availability of consolidation, transfer, or assignment of the loans and the minimum annual payment on the aggregate of the loans;
 - (g) the granting of an interview before or at the time the borrower signs a repayment schedule; and
 - (h) the revision or renegotiation of the repayment schedule on the loan after repayment has commenced, or if other educational loans from the board or another source are taken after the repayment has commenced.
- (3) On obligations purchased or loans made by the board which are federally insured loans, the board may establish variable repayment schedules conforming to the need and documented income levels of borrowers, if the schedules are not inconsistent with federal laws, rules, or regulations governing the insured loans. A borrower making payments on a loan may request and be granted a revised repayment term or schedule based upon the established variable repayment schedules.

Enacted by Chapter 167, 1987 General Session

53B-13-112 Separation of duties, responsibilities, funds, liabilities, and expenses -- Immunity from personal liability.

- (1) The duties, responsibilities, funds, liabilities, and expenses of the board under this chapter shall be maintained wholly separate and apart from their other duties, responsibilities, funds, liabilities, and expenses.
- (2) A member of the board or a person executing the notes, bonds, or other obligations of the board is not personally liable for the repayment of the note, bond, or other obligation or subject to personal liability or accountability by reason of its issuance or nonissuance.

Enacted by Chapter 167, 1987 General Session

53B-13-113 Bond approval by attorney general incontestable after 30 days -- Recital of certification.

- (1) The attorney general shall examine the resolutions and proceedings authorizing the issuance and confirming the sale of bonds under this chapter.
- (2) Once examined and certified as legal obligations by the attorney general, the bonds become incontestable in any court in the state unless suit is brought in a court having jurisdiction within 30 days from the date of certification.

- (3) The bonds certified under this section shall contain a recital on their face as follows: "This bond is one of a series of bonds which were certified as legal obligations by the Attorney General of the state of Utah on _____."
- (4) Bonds authorized, issued, and sold under resolutions and proceedings certified by the attorney general are valid and binding obligations according to their terms.

Enacted by Chapter 167, 1987 General Session

53B-13-114 Mandamus in Supreme Court -- Precedence.

- (1) If an official required by the proceeding authorizing bonds under this chapter to sign the bonds refuses to affix his signature to them, or if the attorney general refuses to certify the bonds as legal obligations, alleging illegality of the bonds, the board may bring an original action in mandamus in the Supreme Court of Utah.
- (2) The importance to the state and its inhabitants of the program of loans to eligible borrowers is such that this action brought in the Supreme Court should be given precedence over the other matters pending before the court, and the court is requested to give this action precedence and to render its decision concerning it at the earliest possible time.

Enacted by Chapter 167, 1987 General Session