

Effective 1/24/2018

**Part 6
Charter School Credit Enhancement Program**

53G-5-601 Definitions.

As used in this part:

- (1) "Annual charter school enrollment" means the total enrollment of all students in the state enrolled in a charter school in grades kindergarten through grade 12, based on October 1 enrollment counts.
- (2) "Annual state enrollment" means the total enrollment of all students in the state enrolled in a public school in grades kindergarten through grade 12, based on October 1 enrollment counts.
- (3) "Authority" means the Utah Charter School Finance Authority created by this part.
- (4) "Board" means the governing board of the authority described in Section 53G-5-602.
- (5) "Charter school" means a school created under this chapter.
- (6) "Credit enhancement program" means the Charter School Credit Enhancement Program established in Section 53G-5-606.
- (7) "Debt service reserve fund" means the reserve fund created or established by, or for the benefit of, a qualifying charter school for the purpose of paying principal of and interest on bonds issued under the credit enhancement program as the payments become due and other money of the qualifying charter school is not available to make the payments.
- (8) "Debt service reserve fund requirement" means, as of a particular date of computation, and with respect to a particular issue of bonds, the amount required to be on deposit in the debt service reserve fund, which amount:
 - (a) may be a sum certain or as set forth in a formula; and
 - (b) may not be less than the maximum annual debt service requirement for the related bonds.
- (9)
 - (a) "Obligations" mean any notes, debentures, revenue bonds, or other evidences of financial indebtedness, except as provided in Subsection (9)(b).
 - (b) "Obligations" do not include general obligation bonds.
- (10) "Project" means:
 - (a) any building, structure, or property owned, to be acquired, or used by a charter school for any of its educational purposes and the related appurtenances, easements, rights-of-way, improvements, paving, utilities, landscaping, parking facilities, and lands; or
 - (b) any capital equipment owned, to be acquired, or used by a charter school for any of its educational purposes, interests in land, and grounds, together with the personal property necessary, convenient, or appurtenant to them.
- (11) "Qualifying charter school" means a charter school that:
 - (a) meets standards adopted by the authority for participation in the credit enhancement program; and
 - (b) is designated by the authority as a qualifying charter school for purposes of participation in the credit enhancement program.
- (12) "Reserve account" means the Charter School Reserve Account created in Section 53F-9-303.

Renumbered and Amended by Chapter 3, 2018 General Session

53G-5-602 Utah Charter School Finance Authority created -- Members -- Compensation -- Services.

- (1) There is created a body politic and corporate known as the Utah Charter School Finance Authority. The authority is created to provide an efficient and cost-effective method of financing charter school facilities.
- (2) The governing board of the authority shall be composed of:
 - (a) the governor or the governor's designee;
 - (b) the state treasurer; and
 - (c) the state superintendent or the state superintendent's designee.
- (3) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (4) Upon request, the state board shall provide staff support to the authority.

Amended by Chapter 293, 2019 General Session

53G-5-603 Powers and duties of authority.

- (1) The authority shall have perpetual succession as a body politic and corporate.
- (2) The authority may:
 - (a) sue and be sued in its own name;
 - (b) have, and alter at will, an official seal;
 - (c) contract with experts, advisers, consultants, and agents for needed services;
 - (d) receive and accept aid or contributions from any source, including the United States or this state, in the form of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this part, subject to the conditions upon which the aid and contributions are made, for any purpose consistent with this part;
 - (e) exercise the powers granted to municipalities and counties pursuant to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, including the power to borrow money and issue obligations, including refunding obligations, subject to the same limitations as that imposed on a municipality or county under the act, except:
 - (i) the authority may only exercise powers under the act to finance or refinance a project as defined in Section 53G-5-601; and
 - (ii) the authority's area of operation shall include all areas of the state;
 - (f) employ advisers, consultants, and agents, including financial experts, independent legal counsel, and any advisers, consultants, and agents as may be necessary in its judgment and fix their compensation;
 - (g) make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions;
 - (h) in accordance with Section 53G-5-606, designate a charter school as a qualifying charter school for purposes of participation in the credit enhancement program; and
 - (i) have and exercise any other powers or duties that are necessary or appropriate to carry out and effectuate the purposes of this part.
- (3) Except as provided in Section 53G-5-607, 53G-5-608, or 53G-5-609, the Utah Charter School Finance Authority may not exercise power in any manner which would create general or moral obligations of the state or of any agency, department, or political subdivision of the state.

Renumbered and Amended by Chapter 3, 2018 General Session

53G-5-604 Limited obligations.

Except as provided in Section 53G-5-607, 53G-5-608, or 53G-5-609, bonds, notes, and other obligations issued by the authority:

- (1) do not constitute a debt, moral obligation, or liability of the state, or of any county, city, town, school district, or any other political subdivision of the state;
- (2) do not constitute the loan of credit of the state or of any county, city, town, school district, or any other political subdivision of the state; and
- (3) may not be paid from funds other than loan payments or lease revenues received from a charter school or other funds pledged by a charter school.

Renumbered and Amended by Chapter 3, 2018 General Session

53G-5-605 State to succeed to property of authority when encumbrances paid or authority dissolved.

- (1) If the authority is dissolved at any time, for any reason, all funds, property, rights, and interests of the authority, following the satisfaction of the authority's obligations, shall immediately vest in and become the property of the state, which shall succeed to all rights of the authority subject to any encumbrances which may then exist on any particular properties.
- (2) None of the net earnings of the authority shall inure to the benefit of any private person.

Renumbered and Amended by Chapter 3, 2018 General Session

53G-5-606 Charter School Credit Enhancement Program -- Standards for the designation of qualifying charter schools -- Debt service reserve fund requirements.

- (1) There is created the Charter School Credit Enhancement Program to assist qualifying charter schools in obtaining favorable financing by providing a means of replenishing a qualifying charter school's debt service reserve fund.
- (2) The authority shall establish standards for a charter school to be designated as a qualifying charter school.
- (3) In establishing the standards described in Subsection (2) the authority shall consider:
 - (a) whether a charter school has received an investment grade rating, independent of any rating enhancement resulting from the issuance of bonds pursuant to the credit enhancement program;
 - (b) the location of the charter school's project;
 - (c) the operating history of the charter school;
 - (d) the financial strength of the charter school; and
 - (e) any other criteria the authority determines are relevant.
- (4) The bonds issued by the authority for a qualifying charter school are not an indebtedness of the state or of the authority but are special obligations payable solely from:
 - (a) the revenues or other funds pledged by the qualifying charter school; and
 - (b) amounts appropriated by the Legislature pursuant to Subsection (9).
- (5) The authority shall notify the authorizer of a charter school that the charter school is participating in the credit enhancement program if the authority:
 - (a) designates the charter school as a qualifying charter school; and
 - (b) issues bonds for the qualifying charter school under the credit enhancement program.
- (6) One or more debt service reserve funds shall be established for a qualifying charter school with respect to bonds issued pursuant to the credit enhancement program.
- (7)

- (a) Except as provided in Subsection (7)(b), money in a debt service reserve fund may not be withdrawn from the debt service reserve fund if the amount withdrawn would reduce the level of money in the debt service reserve fund to less than the debt service reserve fund requirement.
- (b) So long as the applicable bonds issued under the credit enhancement program remain outstanding, money in a debt service reserve fund may be withdrawn in an amount that would reduce the level of money in the debt service reserve fund to less than the debt service reserve fund requirement if the money is withdrawn for the purpose of:
 - (i) paying the principal of, redemption price of, or interest on a bond when due and if no other money of the qualifying charter school is available to make the payment, as determined by the authority; or
 - (ii) paying any redemption premium required to be paid when the bonds are redeemed prior to maturity if no bonds will remain outstanding upon payment from the funds in the qualifying charter school's debt service reserve fund.
- (8) Money in a qualifying charter school's debt service reserve fund that exceeds the debt service reserve fund requirement may be withdrawn by the qualifying charter school.
- (9)
 - (a) The authority shall annually, on or before December 1, certify to the governor the amount, if any, required to restore amounts on deposit in the debt service reserve funds of qualifying charter schools to the respective debt service reserve fund requirements.
 - (b) The governor shall request from the Legislature an appropriation of the certified amount to restore amounts on deposit in the debt service reserve funds of qualifying charter schools to the respective debt service reserve fund requirements.
 - (c) The Legislature may appropriate money to the authority to restore amounts on deposit in the debt service reserve funds of qualifying charter schools to the respective debt service reserve fund requirements.
 - (d) A qualifying charter school that receives money from an appropriation to restore amounts on deposit in a debt service reserve fund to the debt service reserve fund requirement, shall repay the state at the time and in the manner as the authority shall require.
- (10) The authority may create and establish other funds for its purposes.

Renumbered and Amended by Chapter 3, 2018 General Session

53G-5-607 Charter School Reserve Account contribution requirements for qualifying charter schools.

- (1) When bonds are issued under the credit enhancement program for a qualifying charter school, the qualifying charter school shall contribute money to the reserve account in the amount determined as provided in Subsection (2).
- (2) The authority shall determine the up-front and ongoing requirements for contributions of money to the reserve account for each qualifying charter school.

Renumbered and Amended by Chapter 3, 2018 General Session

53G-5-608 Bond issuance.

- (1)
 - (a) The state may not alter, impair, or limit the rights of bondholders or persons contracting with a qualifying charter school until the bonds, including interest and other contractual obligations, are fully met and discharged.

- (b) Nothing in this part precludes an alteration, impairment, or limitation if provision is made by law for the protection of bondholders or persons entering into contracts with a qualifying charter school.
- (2) The authority may require a qualifying charter school to vest in the authority the right to enforce any covenant made to secure bonds issued under the credit enhancement program by making appropriate provisions in the indenture related to the qualifying charter school's bonds.
- (3) The authority may require a qualifying charter school to make covenants and agreements in indentures or in a reimbursement agreement to protect the interests of the state and to secure repayment to the state of any money received by the qualifying charter school from an appropriation to restore amounts deposited in the qualifying charter school's debt service reserve fund to the debt service reserve fund requirement.
- (4) The authority may charge a fee to administer the issuance of bonds for a qualifying charter school.

Renumbered and Amended by Chapter 3, 2018 General Session

53G-5-609 Limitation on participation in Charter School Credit Enhancement Program.

- (1) In accordance with Subsection (2), on or before January 1 of each year, the authority shall determine the credit enhancement program's bond issuance limitation.
- (2) The authority may not issue bonds for a qualifying charter school under the credit enhancement program if the total par amount outstanding under the program would exceed an amount equal to the product of:
 - (a) 1.3;
 - (b) an amount equal to the quotient of:
 - (i) annual charter school enrollment; divided by
 - (ii) annual state enrollment; and
 - (c) the total par amount then outstanding under the school bond guarantee program established in Chapter 4, Part 8, School District Bond Guaranty.

Renumbered and Amended by Chapter 3, 2018 General Session