

Part 4 Bonding

63H-2-401 Resolution authorizing issuance of authority bond -- Characteristics of bond.

- (1)
- (a) Subject to the other requirements of this part, the authority may issue a bond:
 - (i) if the authority obtains the consent of the agency or municipality in which the assessment area or project area is located, to finance, in whole or in part, a qualifying energy delivery project; or
 - (ii) to:
 - (A) finance the purchase of one or more assessment bonds or tax increment bonds issued by a municipality or agency to facilitate an energy delivery project in a specific assessment area or project area; and
 - (B) administer an assessment area or project area that generates revenue to pay the debt service on an assessment bond or a tax increment bond described in Subsection (1)(a)(ii)(A).
 - (b) The authority may not issue a bond under this part unless before the issuance of the bond, the board adopts a resolution authorizing the issuance of the bond.
- (2)
- (a) If provided in a resolution authorizing the issuance of an authority bond or in the trust indenture under which the authority bond is issued, an authority bond may be:
 - (i) issued in one or more series; and
 - (ii) sold:
 - (A) at a public or private sale; and
 - (B) in the manner provided in the resolution or indenture.
 - (b) An authority bond shall:
 - (i) bear the date provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (ii) be payable at the time provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (iii) bear interest at the rate provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (iv) be in the denomination and in the form provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (v) carry the conversion or registration privileges provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (vi) have the rank or priority as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (vii) be executed in the manner as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (viii) be subject to the terms of redemption or tender, with or without premium, as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued;
 - (ix) be payable in the medium of payment and at the place as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued; and

- (x) have other characteristics as provided in the resolution authorizing the issuance of the authority bond or the trust indenture under which the authority bond is issued.

Amended by Chapter 301, 2014 General Session

63H-2-402 Sources from which an authority bond may be made payable -- Authority powers regarding authority bond.

- (1) The principal and interest on an authority bond may be made payable from:
 - (a) the income and revenues related to a qualifying energy delivery project financed with the proceeds of the authority bond;
 - (b) the income and revenues from a public or private source under Subsection 63H-2-201(2)(c);
 - (c) a contribution, loan, grant, or other financial assistance from a public entity or other source under Subsection 63H-2-201(2)(d);
 - (d) authority revenues generally; or
 - (e) money derived from a combination of the methods listed in Subsections (1)(a) through (d).
- (2) In connection with the issuance of an authority bond, the authority may:
 - (a) pledge all or any part of the authority's gross or net revenues to which the authority:
 - (i) has a right that exists at issuance of the authority bond; or
 - (ii) may have a right that comes into existence after issuance of the authority bond; and
 - (b) even if a covenant or action is not specifically enumerated in this chapter, make a covenant or take an action that:
 - (i) may be necessary, convenient, or desirable to secure the authority bond; or
 - (ii) except as otherwise provided in this chapter, will tend to make the authority bond more marketable.
- (3) A member of the board or other person executing an authority bond is not liable personally on the authority bond.
- (4)
 - (a) An authority bond:
 - (i) is not a general obligation or liability of the state or any of the state's political subdivisions; and
 - (ii) does not constitute a charge against the general credit or taxing powers of the state or any of the state's political subdivisions.
 - (b) An authority bond is not payable out of money or properties other than those of the authority pledged for the payment of the bond.
 - (c) A community, the state, or a political subdivision of the state may not be liable on an authority bond.
 - (d) An authority bond does not constitute indebtedness within the meaning of a constitutional or statutory debt limitation.
- (5) An authority bond is fully negotiable.
- (6) An authority bond is:
 - (a) issued for an essential public and governmental purpose; and
 - (b) together with interest on the authority bond and income from the authority bond, exempt from state taxes except the corporate franchise tax.
- (7) Nothing in this section may be construed to limit the right of an obligee to pursue a remedy for the enforcement of a pledge or lien given under this part by the authority on the authority's rents, fees, grants, properties, or revenues.

Amended by Chapter 37, 2012 General Session

63H-2-403 Purchaser of an authority bond.

- (1) The following may purchase an authority bond with funds owned or controlled by the purchaser:
 - (a) a person;
 - (b) a political subdivision of the state;
 - (c) another entity; or
 - (d) a public or private officer.
- (2) Nothing in this section or Section 63H-2-402 may be construed to relieve a purchaser of an authority bond of a duty to exercise reasonable care in selecting securities.
- (3) The authority may purchase its own authority bond at a price that the board determines.

Enacted by Chapter 378, 2009 General Session

63H-2-404 Obligee rights -- Board may confer other rights.

- (1) In addition to a right that is conferred on an obligee of an authority bond under this chapter and subject to contractual restrictions binding on the obligee, an obligee may:
 - (a) by mandamus, suit, action, or other proceeding:
 - (i) compel the authority and its board, officers, agents, or employees to perform every term, provision, and covenant contained in a contract of the authority with or for the benefit of the obligee; and
 - (ii) require the authority to carry out the covenants and agreements of the authority and to fulfill the duties imposed on the authority by this part; and
 - (b) by suit, action, or proceeding in equity, enjoin an act or things that may be unlawful or violate the rights of the obligee.
- (2)
 - (a) In a resolution authorizing the issuance of an authority bond or in a trust indenture, mortgage, lease, or other contract, the board may confer upon an obligee holding or representing a specified amount in an authority bond, a right described in Subsection (2)(b):
 - (i) to accrue upon the happening of an event or default prescribed in the resolution, indenture, mortgage, lease, or other contract; and
 - (ii) to be exercised by suit, action, or proceeding in a court of competent jurisdiction.
 - (b)
 - (i) A right that the board may confer under Subsection (2)(a) is a right to:
 - (A) cause possession of all or part of a qualifying energy delivery project to be surrendered to an obligee;
 - (B) obtain the appointment of a receiver of all or part of:
 - (I) a qualifying energy delivery project; and
 - (II) the rents and profits from a qualifying energy delivery project; and
 - (C) require the authority, its board, and its employees to account as if the authority, board, and employees were the trustees of an express trust.
 - (ii) If a receiver is appointed through the exercise of a right granted under Subsection (2)(b)(i)(B), the receiver:
 - (A) may:
 - (I) enter and take possession of a qualifying energy delivery project or any part of the qualifying energy delivery project;
 - (II) operate and maintain the qualifying energy delivery project; and
 - (III) collect and receive the fees, rents, revenues, or other charges arising from the qualifying energy delivery project after the receiver's appointment; and

(B) shall:

- (I) keep money collected as receiver for the authority in one or more separate accounts; and
- (II) apply the money collected as receiver pursuant to the authority obligations as the court directs.

Amended by Chapter 37, 2012 General Session