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1998 HIGHWAY FINANCING

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Lane Beattie

AN ACT RELATING TO BONDING FOR HIGHWAY CONSTRUCTION AND REPAIR;
AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS FOR
HIGHWAYS AND RELATED FACILITIES; AUTHORIZING THE ISSUANCE AND SALE
OF GENERAL OBLIGATION BOND ANTICIPATION NOTES FOR HIGHWAYS AND
RELATED FACILITIES; SPECIFYING THE USE OF BOND AND NOTE PROCEEDS AND
THE MANNER OF ISSUANCE; IMPOSING AND ABATING A PROPERTY TAX;
CREATING SINKING FUNDS; MODIFYING DEBT LIMIT REQUIREMENTS;
PROVIDING FOR RELATED MATTERS; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

63B-6-202, as enacted by Chapter 270, Laws of Utah 1997

ENACTS:

- 63B-7-201**, Utah Code Annotated 1953
- 63B-7-202**, Utah Code Annotated 1953
- 63B-7-203**, Utah Code Annotated 1953
- 63B-7-204**, Utah Code Annotated 1953
- 63B-7-205**, Utah Code Annotated 1953
- 63B-7-206**, Utah Code Annotated 1953
- 63B-7-207**, Utah Code Annotated 1953
- 63B-7-208**, Utah Code Annotated 1953
- 63B-7-209**, Utah Code Annotated 1953
- 63B-7-210**, Utah Code Annotated 1953
- 63B-7-211**, Utah Code Annotated 1953

- 1 **63B-7-212**, Utah Code Annotated 1953
- 2 **63B-7-213**, Utah Code Annotated 1953
- 3 **63B-7-214**, Utah Code Annotated 1953
- 4 **63B-7-215**, Utah Code Annotated 1953
- 5 **63B-7-216**, Utah Code Annotated 1953
- 6 **63B-7-217**, Utah Code Annotated 1953
- 7 **63B-7-301**, Utah Code Annotated 1953
- 8 **63B-7-302**, Utah Code Annotated 1953
- 9 **63B-7-303**, Utah Code Annotated 1953
- 10 **63B-7-304**, Utah Code Annotated 1953

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

12 Section 1. Section **63B-6-202** is amended to read:

13 **63B-6-202. Maximum amount -- Projects authorized.**

14 (1) [(a)] The total amount of bonds issued under this part may not exceed \$600,000,000.

15 [~~(b) During fiscal years 1997-98 and 1998-99, the commission may not issue more than~~
16 ~~\$350,000,000 in total bonds under this part.~~]

17 (2) (a) Proceeds from the issuance of bonds shall be provided to the Department of
18 Transportation to provide funds to pay all or part of the costs of state highway construction
19 projects.

20 (b) These costs may include the cost of acquiring land, interests in land, easements and
21 rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient
22 to the facilities, interest estimated to accrue on these bonds during the period to be covered by
23 construction of the projects plus a period of six months after the end of the construction period,
24 interest estimated to accrue on any bond anticipation notes issued under the authority of Chapter
25 6, Part 3, Highway Bond Anticipation Note Authorization, and all related engineering,
26 architectural, and legal fees.

27 (3) If, after completion of the projects authorized under Subsection (2)(a) and payment of
28 the costs of issuing and selling the bonds under Section 63B-6-203, any bond proceeds remain
29 unexpended, the Department of Transportation may use those unexpended proceeds to pay all or
30 part of the costs of construction projects approved by the Transportation Commission.

31 (4) The commission, may, by resolution, make any statement of intent relating to a

1 reimbursement that is necessary or desirable to comply with federal tax law.

2 (5) The Department of Transportation may enter into agreements related to that project
3 before the receipt of proceeds of bonds issued under this chapter.

4 Section 2. Section **63B-7-201** is enacted to read:

5 **CHAPTER 7. HIGHWAY BOND ANTICIPATION NOTE AUTHORIZATION**

6 **Part 2. 1998 Highway General Obligation Bond Authorization**

7 **63B-7-201. State Bonding Commission authorized to issue general obligation bonds.**

8 The commission created under Section 63B-1-201 may issue and sell general obligation
9 bonds of the state pledging the full faith, credit, and resources of the state for the payment of the
10 principal of and interest on the bonds, to provide funds to the Department of Transportation.

11 Section 3. Section **63B-7-202** is enacted to read:

12 **63B-7-202. Maximum amount -- Projects authorized.**

13 (1) (a) The total amount of bonds issued under this part may not exceed \$240,000,000.

14 (b) Bonds in an amount up to \$190,000,000 may be issued at a time the commission
15 determines as provided in this part.

16 (c) In addition to the bonds issued under Subsection (1)(b), if Utah does not receive at least
17 \$50,000,000 in federal monies for projects funded from the Centennial Highway Fund before
18 March 1, 1999, up to \$50,000,000 in bonds may be issued to fund the difference between
19 \$50,000,000 and the amount, if any, actually received from the federal government for projects
20 funded from the Centennial Highway Fund.

21 (d) The executive director of the Department of Transportation shall certify the amount
22 of monies actually received from the federal government.

23 (e) That certificate may be conclusively relied upon by the commission in connection with
24 the issuance of the bonds.

25 (2) (a) Proceeds from the issuance of bonds shall be provided to the Department of
26 Transportation to provide funds to pay all or part of the costs of state highway construction or
27 reconstruction projects.

28 (b) These costs may include the cost of acquiring land, interests in land, easements and
29 rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient
30 to the facilities, interest estimated to accrue on these bonds during the period to be covered by
31 construction of the projects plus a period of six months after the end of the construction period,

1 interest estimated to accrue on any bond anticipation notes issued under the authority of Chapter
2 7, Part 3, Highway Bond Anticipation Note Authorization, and all related engineering,
3 architectural, and legal fees.

4 (3) If, after completion of the projects authorized under Subsection (2)(a) and payment of
5 the costs of issuing and selling the bonds under Section 63B-7-203, any bond proceeds remain
6 unexpended, the Department of Transportation may use those unexpended proceeds to pay all or
7 part of the costs of construction projects approved and prioritized by the Transportation
8 Commission.

9 (4) The commission may, by resolution, make any statement of intent relating to a
10 reimbursement that is necessary or desirable to comply with federal tax law.

11 (5) The Department of Transportation may enter into agreements related to that project
12 before the receipt of proceeds of bonds issued under this chapter.

13 Section 4. Section **63B-7-203** is enacted to read:

14 **63B-7-203. Bond proceeds may be used to pay costs of issuance and sale.**

15 The proceeds of bonds issued under this chapter shall be used for the purposes described
16 in Section 63B-7-202 and to pay all or part of any cost incident to the issuance and sale of the
17 bonds including, without limitation, printing, registration and transfer costs, legal fees, trustees'
18 fees, financial advisors' fees, and underwriters' discount.

19 Section 5. Section **63B-7-204** is enacted to read:

20 **63B-7-204. Manner of issuance -- Amounts, interest, and maturity.**

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

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

25 (3) A bond issued may not mature later than 20 years after the date of final passage of this
26 chapter.

27 Section 6. Section **63B-7-205** is enacted to read:

28 **63B-7-205. Terms and conditions of sale -- Plan of financing -- Signatures --**
29 **Replacement -- Registration -- Federal rebate.**

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

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

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

3 (c) denominations;

4 (d) form;

5 (e) manner of execution;

6 (f) manner of authentication;

7 (g) place and medium of purchase;

8 (h) redemption terms; and

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

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

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

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

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

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

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

29 (b) Bonds in changed denominations shall:

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

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

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

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

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

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

17 (6) The commission may:

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

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

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

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

24 Section 7. Section **63B-7-206** is enacted to read:

25 **63B-7-206. Constitutional debt limitation.**

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

28 (2) For purposes of applying the debt limitation contained in Utah Constitution Article
29 XIV, Section 1, the value of the taxable property in Utah is considered to be 100% of the fair
30 market value of the taxable property of the state, as computed from the last assessment for state
31 purposes previous to the issuance of the bonds.

1 Section 8. Section **63B-7-207** is enacted to read:

2 **63B-7-207. Tax levy -- Abatement of tax.**

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

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

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

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

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

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

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

14 Section 9. Section **63B-7-208** is enacted to read:

15 **63B-7-208. Creation of sinking fund.**

16 (1) There is created a sinking fund, to be administered by the state treasurer, entitled the
17 "1998 Highway General Obligation Bonds Sinking Fund."

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

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

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

23 Section 10. Section **63B-7-209** is enacted to read:

24 **63B-7-209. Payment of interest, principal, and redemption premiums.**

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

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

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

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

30 Section 11. Section **63B-7-210** is enacted to read:

31 **63B-7-210. Investment of sinking fund money.**

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

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

8 Section 12. Section **63B-7-211** is enacted to read:

9 **63B-7-211. Bond proceeds -- Deposits -- Investment -- Disposition of investment**
10 **income and unexpended proceeds.**

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

13 (b) The state treasurer shall administer and maintain these accounts unless otherwise
14 provided by the commission by resolution.

15 (c) The commission, by resolution, may provide for the deposit of these monies with a
16 trustee and the administration, disposition, or investment of these monies by this trustee.

17 (2) (a) The commission, by resolution, shall provide for the kinds of investments in which
18 the proceeds of bonds issued under this chapter may be invested.

19 (b) Income from the investment of proceeds of bonds issued under this chapter shall be
20 applied as provided by resolution of the commission.

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

24 Section 13. Section **63B-7-212** is enacted to read:

25 **63B-7-212. Refunding of bonds.**

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

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

30 Section 14. Section **63B-7-213** is enacted to read:

31 **63B-7-213. Certification of satisfaction of conditions precedent -- Conclusiveness.**

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

3 (2) A recital on any bond of this finding and certification conclusively establishes the
4 completion and satisfaction of all such conditions.

5 Section 15. Section **63B-7-214** is enacted to read:

6 **63B-7-214. Tax exemption.**

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

9 Section 16. Section **63B-7-215** is enacted to read:

10 **63B-7-215. Legal investment status.**

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

14 Section 17. Section **63B-7-216** is enacted to read:

15 **63B-7-216. Publication of resolution or notice -- Limitation on actions to contest**
16 **legality.**

17 (1) The commission may:

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

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

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

23 (i) the legality of the resolution;

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

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

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

29 Section 18. Section **63B-7-217** is enacted to read:

30 **63B-7-217. Report to Legislature.**

31 The governor shall report the commission's proceedings to each annual general session of

1 the Legislature in his budget for as long as bonds issued under this chapter remain outstanding.

2 Section 19. Section **63B-7-301** is enacted to read:

3 **Part 3. 1998 Highway Bond Anticipation Note Authorization**

4 **63B-7-301. Definitions.**

5 As used in this part:

6 (1) "Bond anticipation note" means a note issued in anticipation of the receipt of the
7 proceeds of the sale of the bonds authorized under Part 2 of this chapter.

8 (2) "Flexible note" means a bond anticipation note whose interest is payable at, and on one
9 or more dates before, maturity.

10 (3) (a) "Short-term series note" means a bond anticipation note that is one of a series of
11 notes issued pursuant to a financing program under which it is expected that:

12 (i) each note will be paid from the proceeds of one or more renewal notes of that series;
13 and

14 (ii) the final note or notes of the series will be paid from:

15 (A) the proceeds of bonds in anticipation of the receipt of which the note or notes were
16 issued; or

17 (B) monies of the state on hand and legally available for that purpose.

18 (b) "Short-term series note" includes any note issued pursuant to a revolving credit
19 agreement or other similar liquidity facility for the purpose of renewing or paying outstanding
20 short-term series notes on their stated maturity dates when those short-term series notes are not
21 renewed or paid from the proceeds of one or more other renewal notes of the series.

22 Section 20. Section **63B-7-302** is enacted to read:

23 **63B-7-302. Authorization, terms, and procedures.**

24 (1) The state treasurer may, by written order, issue bond anticipation notes and renewals
25 of bond anticipation notes, including, but not limited to, flexible notes and short-term series notes,
26 in the form and with the terms that he determines.

27 (2) The state treasurer may:

28 (a) enter into whatever agreements with other persons that he considers necessary or
29 appropriate in connection with the issuance, sale, and resale of the notes; and

30 (b) resell or retire any notes purchased by the state before the stated maturity of those
31 notes.

1 (3) (a) The notes and renewals of the notes shall:

2 (i) bear the interest rate or rates as determined by the state treasurer; and

3 (ii) mature within a period not to exceed three years.

4 (b) The notes and renewals of notes may:

5 (i) bear a variable interest rate; and

6 (ii) be redeemed prior to maturity by the state treasurer, but only in accordance with the
7 provisions of the notes relating to redemption prior to maturity.

8 (4) The proceeds from the sale of the notes may be used only for:

9 (a) the purposes established in Section 63B-7-202;

10 (b) the payment of principal of and, if not otherwise provided, interest on, bond
11 anticipation notes;

12 (c) the payment of costs of issuance; or

13 (d) any combination of Subsections (4)(a), (b), and (c).

14 (5) (a) All of the notes and any renewals of the notes shall be payable from the proceeds
15 of the sale of bonds.

16 (b) A renewal of any note may not be issued after the sale of bonds in anticipation of
17 which the original note was issued.

18 (6) If a sale of the bonds has not occurred before the maturity of the notes issued in
19 anticipation of the sale, the state treasurer shall, in order to meet the notes then maturing:

20 (a) issue renewal notes for that purpose;

21 (b) pay the notes from state monies legally available for paying those notes; or

22 (c) any combination of Subsections (6)(a) and (b).

23 (7) Each note and any renewal of any note, with the interest on the note or renewal,
24 constitute general obligations of the state.

25 (8) Each note and any renewal of any note, with the interest on the note or renewal, shall
26 be:

27 (a) secured by the full faith, credit, and resources of the state in the manner provided in
28 Part 2 of this chapter;

29 (b) payable from:

30 (i) the proceeds of the sale of the bonds and not from any other borrowing; and

31 (ii) monies of the state on hand and legally available for that purpose; or

1 (iii) any combination of Subsections (8)(b)(i) and (ii); and

2 (c) payable within five years from the date of original issue.

3 (9) The total amount of notes or renewals of notes issued and outstanding at any one time
4 may not exceed the total amount of bonds authorized to be issued but not yet issued.

5 (10) The state treasurer shall, in his annual report to the governor, include a detailed
6 statement of all notes and bonds issued during the year and of his actions in relation to them.

7 Section 21. Section **63B-7-303** is enacted to read:

8 **63B-7-303. Purchase and redemption requirements.**

9 (1) The notes and renewals of notes may provide the holders of the notes or renewals of
10 notes with the right to require the state or other persons to purchase or redeem the notes or renewal
11 notes before the stated maturity of the notes or renewals.

12 (2) Notwithstanding Subsection (1), the holders of the notes and renewals of notes may
13 not be provided with the right to require the state to repurchase or redeem the notes and renewals
14 of the notes before their stated maturity unless the state has entered into one or more letter of credit
15 agreements or other liquidity facility agreements:

16 (a) for the express purpose of those sales;

17 (b) that require a financially responsible party or parties to the agreement or agreements,
18 other than the state, to purchase or redeem all or any portion of the notes and renewals of notes
19 tendered by the holders of the notes or renewals of notes for repurchase or redemption before the
20 stated maturity of the notes and renewals of notes; and

21 (c) that continue until the right of the holders of the notes and renewals of notes to require
22 repurchase or redemption of the notes and renewals of notes before the stated maturity has ceased.

23 Section 22. Section **63B-7-304** is enacted to read:

24 **63B-7-304. General provisions -- Funds and accounts.**

25 (1) (a) Sections 63B-7-205, 63B-7-206, 63B-7-213, 63B-7-214, 63B-7-215, and
26 63B-7-216 apply to any notes or renewals of notes issued under this part.

27 (b) (i) For purposes of this part, any action that those sections require or permit the
28 commission to take shall be considered sufficient if taken by the state treasurer.

29 (ii) The treasurer may take action by issuing a written order, or in some other manner that
30 he finds necessary or convenient, to accomplish the purposes of this part.

31 (2) The treasurer may:

- 1 (a) in a written order, establish whatever funds and accounts are necessary or desirable to
2 carry out the purposes of this part; and
3 (b) until the monies are needed for the purpose for which the fund or account was created,
4 invest the monies held in those funds and accounts by following the procedures and requirements
5 of Title 51, Chapter 7, State Money Management Act.

Legislative Review Note
as of 2-27-98 7:56 AM

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

Office of Legislative Research and General Counsel