

**HIGHWAY FINANCING**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Marda Dillree**

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; AUTHORIZING CERTAIN OTHER HIGHWAY EXPENDITURES; PROVIDING FOR RELATED MATTERS; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

**63-38c-402**, as last amended by Chapter 270, Laws of Utah 1997

**63B-7-202**, as enacted by Chapter 316, Laws of Utah 1998

ENACTS:

**63B-8-201**, Utah Code Annotated 1953

**63B-8-202**, Utah Code Annotated 1953

**63B-8-203**, Utah Code Annotated 1953

**63B-8-204**, Utah Code Annotated 1953

**63B-8-205**, Utah Code Annotated 1953

**63B-8-206**, Utah Code Annotated 1953

**63B-8-207**, Utah Code Annotated 1953

**63B-8-208**, Utah Code Annotated 1953

**63B-8-209**, Utah Code Annotated 1953

**63B-8-210**, Utah Code Annotated 1953

**63B-8-211**, Utah Code Annotated 1953

- 63B-8-212, Utah Code Annotated 1953
- 63B-8-213, Utah Code Annotated 1953
- 63B-8-214, Utah Code Annotated 1953
- 63B-8-215, Utah Code Annotated 1953
- 63B-8-216, Utah Code Annotated 1953
- 63B-8-217, Utah Code Annotated 1953
- 63B-8-301, Utah Code Annotated 1953
- 63B-8-302, Utah Code Annotated 1953
- 63B-8-303, Utah Code Annotated 1953
- 63B-8-304, Utah Code Annotated 1953
- 63B-8-503, Utah Code Annotated 1953

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

Section 1. Section **63-38c-402** is amended to read:

**63-38c-402. Debt limitation -- Vote requirement needed to exceed limitation --**

**Exceptions.**

(1) (a) Except as provided in Subsection (1)(b), the outstanding general obligation debt of the state may not exceed 20% of the maximum allowable appropriations limit unless approved by more than a two-thirds vote of both houses of the Legislature.

(b) Notwithstanding the limitation contained in Subsection (1)(a), debt issued under the authority of Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization ~~[and]~~, Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation ~~[Notes]~~ Note Authorization, Title 63B, Chapter 7, Part 2, 1998 Highway General Obligation Bond Authorization, Title 63B, Chapter 7, Part 3, 1998 Highway Bond Anticipation Note Authorization, Title 63B, Chapter 8, Part 2, 1999 Highway General Obligation Bond Authorization, and Title 63B, Chapter 8, Part 3, 1999 Highway Bond Anticipation Note Authorization, is not subject to the debt limitation established by this section.

(2) This section does not apply if contractual rights will be impaired.

Section 2. Section **63B-7-202** is amended to read:

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

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

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

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

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

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

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

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, interest estimated to accrue on any bond anticipation notes issued under the authority of Chapter 7, Part 3, Highway Bond Anticipation Note Authorization, and all related engineering, architectural, and legal fees.

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

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

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

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

Section 3. Section **63B-8-201** is enacted to read:

**Part 2. 1999 Highway General Obligation Bond Authorization**

**63B-8-201. State Bonding Commission authorized to issue general obligation bonds.**

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

Section 4. Section **63B-8-202** is enacted to read:

**63B-8-202. Maximum amount -- Projects authorized.**

(1) The total amount of bonds issued under this part may not exceed \$68,000,000.

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

(b) These costs may include the cost of acquiring land, interests in land, easements and rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient to the facilities, interest estimated to accrue on these bonds during the period to be covered by construction of the projects plus a period of six months after the end of the construction period, interest estimated to accrue on any bond anticipation notes issued under the authority of Chapter 8, Part 3, Highway Bond Anticipation Note Authorization, and all related engineering, architectural, and legal fees.

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

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

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

Section 5. Section **63B-8-203** is enacted to read:

**63B-8-203. Bond proceeds may be used to pay costs of issuance and sale.**

The proceeds of bonds issued under this chapter shall be used for the purposes described in Section 63B-8-202 and to pay all or part of any cost incident to the issuance and sale of the bonds including, without limitation, printing, registration and transfer costs, legal fees, trustees' fees, financial advisors' fees, liquidity providers' fees, credit enhancement providers' fees, and underwriters' discount.

Section 6. Section **63B-8-204** is enacted to read:

**63B-8-204. Manner of issuance -- Amounts, interest, and maturity.**

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

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

(3) A bond issued may not mature later than 15 years after the dated date of the bonds.

Section 7. Section **63B-8-205** is enacted to read:

**63B-8-205. Terms and conditions of sale -- Plan of financing -- Signatures -- Replacement -- Registration -- Federal rebate.**

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

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

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

(c) denominations;

(d) form;

(e) manner of execution;

(f) manner of authentication;

(g) place and medium of purchase;

(h) redemption terms; and

(i) other provisions and details it considers appropriate.

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

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

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

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

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

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

(b) Bonds in changed denominations shall:

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

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

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

(b) The commission may provide for the services and payment for the services of one or

more financial institutions or other entities or persons, or nominees, within or outside the state, for the authentication, registration, transfer, including record, bookkeeping, or book entry functions, exchange, and payment of the bonds.

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

(d) The bonds and any evidences of participation interest in the bonds may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with Title 15, Chapter 8, Registered Public Obligations Act, or any other act of the Legislature relating to the registration of obligations enacted to meet the requirements of Section 149 of the Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

(6) The commission may:

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

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

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

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

Section 8. Section **63B-8-206** is enacted to read:

**63B-8-206. Constitutional debt limitation.**

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

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

Section 9. Section **63B-8-207** is enacted to read:

**63B-8-207. Tax levy -- Abatement of tax.**

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

- (a) applicable bond redemption premiums, if any;
- (b) interest on the bonds as it becomes due; and
- (c) principal of the bonds as it becomes due.

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

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

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

Section 10. Section **63B-8-208** is enacted to read:

**63B-8-208. Creation of sinking fund.**

(1) There is created a sinking fund, to be administered by the state treasurer, entitled the "1999 Highway General Obligation Bonds Sinking Fund."

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

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

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

Section 11. Section **63B-8-209** is enacted to read:

**63B-8-209. Payment of interest, principal, and redemption premiums.**

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

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

- (a) promptly pay the warrants from funds within the sinking fund; and
- (b) immediately transmit the amount paid to the paying agent for the bonds.

Section 12. Section **63B-8-210** is enacted to read:



**63B-8-210. Investment of sinking fund money.**

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

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

Section 13. Section **63B-8-211** is enacted to read:

**63B-8-211. Bond proceeds -- Deposits -- Investment -- Disposition of investment income and unexpended proceeds.**

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

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

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

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

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

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

Section 14. Section **63B-8-212** is enacted to read:

**63B-8-212. Refunding of bonds.**

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

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

Section 15. Section **63B-8-213** is enacted to read:

**63B-8-213. Certification of satisfaction of conditions precedent -- Conclusiveness.**

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

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

Section 16. Section **63B-8-214** is enacted to read:

**63B-8-214. Tax exemption.**

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

Section 17. Section **63B-8-215** is enacted to read:

**63B-8-215. Legal investment status.**

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

Section 18. Section **63B-8-216** is enacted to read:

**63B-8-216. Publication of resolution or notice -- Limitation on actions to contest legality.**

(1) The commission may:

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

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

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

(i) the legality of the resolution;

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

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

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

Section 19. Section **63B-8-217** is enacted to read:

**63B-8-217. Report to Legislature.**

The governor shall report the commission's proceedings to each annual general session of the Legislature in his budget for as long as bonds issued under this chapter remain outstanding.

Section 20. Section **63B-8-301** is enacted to read:

**Part 3. 1999 Highway Bond Anticipation Note Authorization**

**63B-8-301. Definitions.**

As used in this part:

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

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

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

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

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

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

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

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

Section 21. Section **63B-8-302** is enacted to read:

**63B-8-302. Authorization, terms, and procedures.**

(1) The state treasurer may, by written order, issue bond anticipation notes and renewals of bond anticipation notes, including flexible notes and short-term series notes, in the form and with the terms that he determines.

(2) The state treasurer may:

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

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

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

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

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

(b) The notes and renewals of notes may:

(i) bear a variable interest rate; and

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

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

(a) the purposes established in Section 63B-8-202;

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

(c) the payment of costs of issuance, credit enhancement, and liquidity support; or

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

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

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

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

(a) issue renewal notes for that purpose;

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

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

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

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

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

(b) payable from:

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

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

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

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

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

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

Section 22. Section **63B-8-303** is enacted to read:

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

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

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

(a) for the express purpose of those repurchases or redemptions;

(b) that require a financially responsible party or parties to the agreement or agreements, other than the state, to purchase or redeem all or any portion of the notes and renewals of notes

tendered by the holders of the notes or renewals of notes for repurchase or redemption before the stated maturity of the notes and renewals of notes; and

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

Section 23. Section **63B-8-304** is enacted to read:

**63B-8-304. General provisions -- Funds and accounts.**

(1) (a) Sections 63B-8-205, 63B-8-206, 63B-8-213, 63B-8-214, 63B-8-215, and 63B-8-216 apply to any notes or renewals of notes issued under this part.

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

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

(2) The treasurer may:

(a) in a written order, establish whatever funds and accounts are necessary or desirable to carry out the purposes of this part; and

(b) until the monies are needed for the purpose for which the fund or account was created, invest the monies held in those funds and accounts by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

Section 24. Section **63B-8-503** is enacted to read:

**63B-8-503. Highway intent language.**

(1) It is the intent of the Legislature that the state treasurer structure the financing so that:

(a) the debt service is minimized; and

(b) the debt may be paid off before July 1, 2007.

(2) It is the intent of the Legislature that:

(a) \$26,000,000 of the bond proceeds issued under this chapter be expended for the construction of the I-15 interchange project at 11400 South in Salt Lake County;

(b) the \$44,000,000 allocated as a Centennial Highway Fund project for the extension of 20th East in Salt Lake County be reduced by \$26,000,000;

(c) the Department of Transportation begin construction on the 11400 South project in fiscal year 1999-2000 instead of fiscal year 2007-2008 if the affected local entities provide for the payment of interest and issuance costs due on the notes or bonds in a manner satisfactory to the state treasurer and the executive director of the Department of Transportation; and

(d) the 20th East funding schedule as contemplated in the Centennial Highway program as of March 3, 1999 is applied in calculating the interest and issuance costs due under this subsection.