

HIGHWAY BONDING

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: David H. Steele

AN ACT RELATING TO BONDS; AUTHORIZING THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS FOR CERTAIN 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; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO ENTER AN AGREEMENT; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

63-38c-402, as last amended by Chapter 331, Laws of Utah 1999

ENACTS:

63B-9-201, Utah Code Annotated 1953

63B-9-202, Utah Code Annotated 1953

63B-9-203, Utah Code Annotated 1953

63B-9-204, Utah Code Annotated 1953

63B-9-205, Utah Code Annotated 1953

63B-9-206, Utah Code Annotated 1953

63B-9-207, Utah Code Annotated 1953

63B-9-208, Utah Code Annotated 1953

63B-9-209, Utah Code Annotated 1953

63B-9-210, Utah Code Annotated 1953

63B-9-211, Utah Code Annotated 1953

63B-9-212, Utah Code Annotated 1953

63B-9-213, Utah Code Annotated 1953

63B-9-214, Utah Code Annotated 1953

63B-9-215, Utah Code Annotated 1953

63B-9-216, Utah Code Annotated 1953

63B-9-217, Utah Code Annotated 1953

This act enacts uncodified material.

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, Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation 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, Title 63B, Chapter 9, Part 2, 2000 Highway General Obligation Bond, 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-9-201** is enacted to read:

Part 2. 2000 Highway General Obligation Bond

63B-9-201. 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 3. Section **63B-9-202** is enacted to read:

63B-9-202. Maximum amount -- Projects authorized.

(1) In addition to any other bonds issued under this part, upon a written request from the Department of Transportation the State Bonding Commission may issue bonds that may not exceed \$6,000,000.

(2) (a) (i) 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 of the interchange on Interstate 80 at 5600 West and approximately one mile of 5600 West both north and south of Interstate 80 in Salt Lake County.

(ii) The interchange and highway construction or reconstruction shall conform to the proposed design standards and configurations for the future 5600 West Legacy Highway profile.

(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, 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-9-203, 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 4. Section **63B-9-203** is enacted to read:

63B-9-203. 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-9-202 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 5. Section **63B-9-204** is enacted to read:

63B-9-204. 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 6. Section **63B-9-205** is enacted to read:

63B-9-205. 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 7, 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 7. Section **63B-9-206** is enacted to read:

63B-9-206. 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 8. Section **63B-9-207** is enacted to read:

63B-9-207. 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 9. Section **63B-9-208** is enacted to read:

63B-9-208. Creation of sinking fund.

(1) There is created a sinking fund, to be administered by the state treasurer, entitled the "2000 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 10. Section **63B-9-209** is enacted to read:

63B-9-209. Payment of interest, principal, and redemption premiums.

The state treasurer shall:

(1) promptly pay any principal and interest due on the bonds from funds within the sinking fund; and

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

Section 11. Section **63B-9-210** is enacted to read:

63B-9-210. 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 12. Section **63B-9-211** is enacted to read:

63B-9-211. 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 13. Section **63B-9-212** is enacted to read:

63B-9-212. 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 14. Section **63B-9-213** is enacted to read:

63B-9-213. 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 15. Section **63B-9-214** is enacted to read:

63B-9-214. 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 16. Section **63B-9-215** is enacted to read:

63B-9-215. 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 17. Section **63B-9-216** is enacted to read:

63B-9-216. 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 18. Section **63B-9-217** is enacted to read:

63B-9-217. 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 19. **Department of Transportation agreement required.**

(1) As used in this section:

(a) "Department" means the Department of Transportation.

(b) "Developer" means a developer of a large sales tax generating development that requires highway improvement projects because of significant impacts on highway infrastructure.

(2) Before the department may request the issuance of bonds under Section 63B-9-202, the department shall enter into an agreement with a developer that specifies the liability of the developer for:

(a) project costs, including costs that exceed the amount of the bond issuance;

(b) new sales tax revenues from construction of the developer's development and new revenues from the completed development that are less than \$6,000,000 within an agreed upon time as certified by the Tax Commission; and

(c) failure of the developer to complete the agreed upon capital construction for the development.

(3) Notwithstanding the requirements of Subsection (2), the agreement may not contain any terms that prevent the bonds under Section 63B-9-202 from being issued on a federally tax-exempt basis.