

**SPECIAL 2002 HIGHWAY GENERAL
OBLIGATION BONDS
2002 GENERAL SESSION
STATE OF UTAH
Sponsor: Dan R. Eastman**

This act modifies the Bonding Code by authorizing the issuance and sale of general obligation bonds and bond anticipation notes by the State Bonding Commission for certain highways and related facilities. This act specifies the use of the bond proceeds and the manner of issuance. This act imposes and abates a property tax and creates a sinking fund. This act exempts bonds issued from statutory debt limitation requirements. This act requires the Department of Transportation to enter an agreement.

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

13 AMENDS:

63-38c-402, as last amended by Chapter 321, Laws of Utah 2001

15 ENACTS:

63B-11-401, Utah Code Annotated 1953

63B-11-402, Utah Code Annotated 1953

63B-11-403, Utah Code Annotated 1953

63B-11-404, Utah Code Annotated 1953

63B-11-405, Utah Code Annotated 1953

63B-11-406, Utah Code Annotated 1953

63B-11-407, Utah Code Annotated 1953

63B-11-408, Utah Code Annotated 1953

63B-11-409, Utah Code Annotated 1953

63B-11-410, Utah Code Annotated 1953

63B-11-411, Utah Code Annotated 1953

63B-11-412, Utah Code Annotated 1953



28 **63B-11-413**, Utah Code Annotated 1953
29 **63B-11-414**, Utah Code Annotated 1953
30 **63B-11-415**, Utah Code Annotated 1953
31 **63B-11-416**, Utah Code Annotated 1953
32 **63B-11-417**, Utah Code Annotated 1953
33 **63B-11-501**, Utah Code Annotated 1953
34 **63B-11-502**, Utah Code Annotated 1953

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

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

37 **63-38c-402. Debt limitation -- Vote requirement needed to exceed limitation --**

38 **Exceptions.**

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

42 (b) Notwithstanding the limitation contained in Subsection (1)(a), debt issued under the
43 authority of the following parts is not subject to the debt limitation established by this section:

- 44 (i) Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization;
- 45 (ii) Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation Note Authorization;
- 46 (iii) Title 63B, Chapter 7, Part 2, 1998 Highway General Obligation Bond Authorization;
- 47 (iv) Title 63B, Chapter 7, Part 3, 1998 Highway Bond Anticipation Note Authorization;
- 48 (v) Title 63B, Chapter 8, Part 2, 1999 Highway General Obligation Bond Authorization;
- 49 (vi) Title 63B, Chapter 8, Part 3, 1999 Highway Bond Anticipation Note Authorization;
- 50 (vii) Title 63B, Chapter 9, Part 2, 2000 Highway General Obligation Bond;
- 51 (viii) Title 63B, Chapter 10, Part 1, 2001 Highway General Obligation Bond; **[and]**
- 52 (ix) Title 63B, Chapter 10, Part 2, 2001 Highway General Obligation Bond Anticipation

53 Notes **[Authorization:]**; and

54 (x) Title 63B, Chapter 11, Part 4, 2002 Highway General Obligation Bond.

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

56 Section 2. Section **63B-11-401** is enacted to read:

57 **CHAPTER 11. 2002 GENERAL OBLIGATION BOND**

58 **Part 4. Special Highway General Obligation Bonds**

59 **63B-11-401. State Bonding Commission authorized to issue general obligation bonds.**

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

63 Section 3. Section **63B-11-402** is enacted to read:

64 **63B-11-402. Maximum amount -- Projects authorized.**

65 (1) In addition to any other bonds issued under this part, upon a written request from the
66 Department of Transportation, the State Bonding Commission may issue bonds that may not
67 exceed \$550,000.

68 (2) (a) Proceeds from the issuance of bonds shall be provided to the Department of
69 Transportation to provide funds to pay all or part of the costs of state highway construction or
70 reconstruction of SR-106 in Bountiful from 1500 South to 1800 South.

71 (b) These costs may include the cost of acquiring land, interests in land, easements and
72 rights-of-way, improving sites, and making all improvements necessary, incidental, or convenient
73 to the facilities, interest estimated to accrue on these bonds during the period to be covered by
74 construction of the projects plus a period of six months after the end of the construction period,
75 and all related engineering, architectural, and legal fees.

76 (3) If, after completion of the projects authorized under Subsection (2)(a) and payment of
77 the costs of issuing and selling the bonds under Section 63B-11-403, any bond proceeds remain
78 unexpended, the Department of Transportation may use those unexpended proceeds to pay all or
79 part of the costs of construction projects approved and prioritized by the Transportation
80 Commission.

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

83 (5) Subject to Subsection (6), the Department of Transportation may enter into agreements
84 related to that project before the receipt of proceeds of bonds issued under this chapter.

85 (6) Before the department may request the issuance of bonds under this section, the
86 department shall enter into an agreement with a developer that specifies that the developer of a
87 large sales tax generating development that requires highway improvement projects because of
88 significant impacts on highway infrastructure is liable for:

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

90 (b) new sales tax revenues from construction of the developer's development and new
91 revenues from the completed development that are less than \$500,000 within an agreed upon time
92 as certified by the State Tax Commission; and

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

95 (7) Notwithstanding the requirements of Subsection (6), the agreement may not contain
96 any terms that prevent the bonds authorized by this section from being issued on a federally
97 tax-exempt basis.

98 Section 4. Section **63B-11-403** is enacted to read:

99 **63B-11-403. Bond proceeds may be used to pay costs of issuance and sale.**

100 The proceeds of bonds issued under this chapter shall be used for the purposes described
101 in Section 63B-11-402 and to pay all or part of any cost incident to the issuance and sale of the
102 bonds including, without limitation, printing, registration and transfer costs, legal fees, trustees'
103 fees, financial advisors' fees, liquidity providers' fees, credit enhancement providers' fees, and
104 underwriters' discount.

105 Section 5. Section **63B-11-404** is enacted to read:

106 **63B-11-404. Manner of issuance -- Amounts, interest, and maturity.**

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

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

111 (3) A bond issued may not mature later than 15 years after the date of the final passage of
112 this chapter.

113 Section 6. Section **63B-11-405** is enacted to read:

114 **63B-11-405. Terms and conditions of sale -- Plan of financing -- Signatures --**

115 **Replacement -- Registration -- Federal rebate.**

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

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

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

120 (c) denominations;

121 (d) form;

122 (e) manner of execution;

123 (f) manner of authentication;

124 (g) place and medium of purchase;

125 (h) redemption terms; and

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

127 (2) The commission may, by resolution, adopt a plan of financing, which may include

128 terms and conditions of arrangements entered into by the commission on behalf of the state with

129 financial and other institutions for letters of credit, standby letters of credit, reimbursement

130 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds, including

131 payment from any legally available source of fees, charges, or other amounts coming due under

132 the agreements entered into by the commission.

133 (3) (a) Any signature of a public official authorized by resolution of the commission to

134 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or

135 otherwise placed on the bonds.

136 (b) If all signatures of public officials on the bonds are facsimile signatures, provision shall

137 be made for a manual authenticating signature on the bonds by or on behalf of a designated

138 authentication agent.

139 (c) If an official ceases to hold office before delivery of the bonds signed by that official,

140 the signature or facsimile signature of the official is nevertheless valid for all purposes.

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

142 on the bonds.

143 (4) (a) The commission may enact resolutions providing for the replacement of lost,

144 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller or

145 larger denominations.

146 (b) Bonds in changed denominations shall:

147 (i) be exchanged for the original bonds in like aggregate principal amounts and in a

148 manner that prevents the duplication of interest; and

149 (ii) bear interest at the same rate, mature on the same date, and be as nearly as practicable

150 in the form of the original bonds.

151 (5) (a) Bonds may be registered as to both principal and interest or may be in a book entry

152 form under which the right to principal and interest may be transferred only through a book entry.

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

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

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

165 (6) The commission may:

166 (a) by resolution, provide for payment to the United States of whatever amounts are
167 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended; and
168 (b) enter into agreements with financial and other institutions and attorneys to provide for:
169 (i) the calculation, holding, and payment of those amounts; and
170 (ii) payment from any legally available source of fees, charges, or other amounts coming
171 due under any agreements entered into by the commission.

172 Section 7. Section **63B-11-406** is enacted to read:

173 **63B-11-406. Constitutional debt limitation.**

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

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

180 Section 8. Section **63B-11-407** is enacted to read:

181 **63B-11-407. Tax levy -- Abatement of tax.**

182 (1) Each year after issuance of the bonds and until all outstanding bonds are retired, there

183 is levied a direct annual tax on all real and personal property within the state subject to state
184 taxation, sufficient to pay:

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

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

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

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

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

190 (3) The direct annual tax imposed under this section is abated to the extent money is

191 available from sources, other than ad valorem taxes in the sinking fund, for the payment of bond
192 interest, principal, and redemption premiums.

193 Section 9. Section **63B-11-408** is enacted to read:

194 **63B-11-408. Creation of sinking fund.**

195 (1) There is created a sinking fund, to be administered by the state treasurer, entitled the
196 "2002 Highway General Obligation Bonds Sinking Fund."

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

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

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

202 Section 10. Section **63B-11-409** is enacted to read:

203 **63B-11-409. Payment of interest, principal, and redemption premiums.**

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

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

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

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

209 Section 11. Section **63B-11-410** is enacted to read:

210 **63B-11-410. Investment of sinking fund money.**

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

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

218 Section 12. Section **63B-11-411** is enacted to read:

219 **63B-11-411. Bond proceeds -- Deposits -- Investment -- Disposition of investment**
220 **income and unexpended proceeds.**

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

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

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

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

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

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

234 Section 13. Section **63B-11-412** is enacted to read:

235 **63B-11-412. Refunding of bonds.**

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

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

240 Section 14. Section **63B-11-413** is enacted to read:

241 **63B-11-413. Certification of satisfaction of conditions precedent -- Conclusiveness.**

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

244 (2) A recital on any bond of this finding and certification conclusively establishes the

245 completion and satisfaction of all conditions precedent.

246 Section 15. Section **63B-11-414** is enacted to read:

247 **63B-11-414. Tax exemption.**

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

250 Section 16. Section **63B-11-415** is enacted to read:

251 **63B-11-415. Legal investment status.**

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

255 Section 17. Section **63B-11-416** is enacted to read:

256 **63B-11-416. Publication of resolution or notice -- Limitation on actions to contest**
257 **legality.**

258 (1) The commission may:

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

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

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

264 (i) the legality of the resolution;

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

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

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

270 Section 18. Section **63B-11-417** is enacted to read:

271 **63B-11-417. Report to Legislature.**

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

274 Section 19. Section **63B-11-501** is enacted to read:

275 **Part 5. Special Highway Bond Anticipation Notes**

276 **63B-11-501. Definitions.**

277 As used in this part:

278 (1) "Bond anticipation note" means a note issued in anticipation of the receipt of the
279 proceeds of the sale of the bonds authorized under Part 4 of this chapter.

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

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

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

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

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

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

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

294 Section 20. Section **63B-11-502** is enacted to read:

295 **63B-11-502. Authorization, terms, and procedures.**

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

299 (2) The state treasurer may:

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

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

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

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

306 (ii) mature within a period not to exceed five years from the date of original issuance.

307 (b) The notes and renewals of notes may:
308 (i) bear a variable interest rate; and
309 (ii) be redeemed prior to maturity by the state treasurer, but only in accordance with the
310 provisions of the notes relating to redemption prior to maturity.
311 (4) The proceeds from the sale of the notes may be used only for:
312 (a) the purposes established in Section 63B-11-402;
313 (b) the payment of principal of and, if not otherwise provided, interest on, bond
314 anticipation notes;
315 (c) the payment of costs of issuance; or
316 (d) any combination of Subsections (4)(a), (b), and (c).
317 (5) (a) All of the notes and any renewals of the notes shall be payable from the proceeds
318 of the sale of bonds.
319 (b) A renewal of any note may not be issued after the sale of bonds in anticipation of
320 which the original note was issued.
321 (6) If a sale of the bonds has not occurred before the maturity of the notes issued in
322 anticipation of the sale, the state treasurer shall, in order to meet the notes then maturing:
323 (a) issue renewal notes for that purpose;
324 (b) pay the notes from state monies legally available for paying those notes; or
325 (c) any combination of Subsections (6)(a) and (b).
326 (7) Each note and any renewal of any note, with the interest on the note or renewal,
327 constitute general obligations of the state.
328 (8) Each note and any renewal of any note, with the interest on the note or renewal, shall
329 be:
330 (a) secured by the full faith, credit, and resources of the state in the manner provided in
331 Part 4 of this chapter;
332 (b) payable from:
333 (i) the proceeds of the sale of the bonds and not from any other borrowing; and
334 (ii) monies of the state on hand and legally available for that purpose; or
335 (iii) any combination of Subsections (8)(b)(i) and (ii); and
336 (c) payable within five years from the date of original issue.
337 (9) (a) As used in this Subsection (9), "total amount of bonds authorized to be issued but

338 not yet issued" includes bonds authorized to be issued only if one or more conditions are met.
339 (b) The total amount of notes or renewals of notes issued and outstanding at any one time
340 may not exceed the total amount of bonds authorized to be issued but not yet issued.
341 (10) The state treasurer shall, in his annual report to the governor, include a detailed
342 statement of all notes and bonds issued during the year and of his actions in relation to them.

Legislative Review Note
as of 2-25-02 11:04 AM

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

Office of Legislative Research and General Counsel