

PRIVATE ACTIVITY BOND AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill modifies provisions related to private activity bonds administered within the Department of Community and Economic Development.

Highlighted Provisions:

This bill:

- ▶ increases the membership of the Private Activity Bond Review Board from 10 to 11 by adding the director of the Division of Business and Economic Development as an ex officio member;
- ▶ recognizes the Division of Community Development as an issuing authority entitled to issue bonds from the Small Issue Bond Account;
- ▶ authorizes the division to promote and assist businesses in applying for and qualifying for private activity bonds; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

9-4-202, as last amended by Chapter 352, Laws of Utah 2004

9-4-503, as last amended by Chapters 159 and 176, Laws of Utah 2002

9-4-508, as enacted by Chapter 287, Laws of Utah 1992

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

Section 1. Section **9-4-202** is amended to read:

9-4-202. Powers and duties of division.

(1) The division shall:

(a) assist local governments and citizens in the planning, development, and maintenance of necessary public infrastructure and services;

(b) cooperate with, and provide technical assistance to, counties, cities, towns, regional planning commissions, area-wide clearinghouses, zoning commissions, parks or recreation boards, community development groups, community action agencies, and other agencies created for the purpose of aiding and encouraging an orderly, productive, and coordinated development of the state and its political subdivisions;

(c) assist the governor in coordinating the activities of state agencies which have an impact on the solution of community development problems and the implementation of community plans;

(d) serve as a clearinghouse for information, data, and other materials which may be helpful to local governments in discharging their responsibilities and provide information on available federal and state financial and technical assistance;

(e) carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary;

(f) assist in funding affordable housing and addressing problems of homelessness;

(g) support economic development activities through grants, loans, and direct programs financial assistance;

(h) certify project funding at the local level in conformance with federal, state, and other requirements;

(i) utilize the capabilities and facilities of public and private universities and colleges within the state in carrying out its functions;

(j) assist and support local governments, community action agencies, and citizens in the planning, development, and maintenance of home weatherization, energy efficiency, and antipoverty activities; and

(k) assist and support volunteer efforts in the state.

(2) The division may:

(a) by following the procedures and requirements of Title 63, Chapter 38e, Federal Funds Procedures, seek federal grants, loans, or participation in federal programs;

(b) if any federal program requires the expenditure of state funds as a condition to participation by the state in any fund, property, or service, with the governor's approval, expend whatever funds are necessary out of the money provided by the Legislature for the use of the department;

(c) in accordance with Part 13, Domestic Violence Shelters, assist in developing, constructing, and improving shelters for victims of domestic violence, as described in Section 77-36-1, through loans and grants to nonprofit and governmental entities; and

(d) assist, when requested by a county or municipality, in the development of accessible housing.

(3) (a) The division is recognized as an issuing authority as defined in Subsection 9-4-502(7), entitled to issue bonds from the Small Issue Bond Account created in Subsection 9-4-506(1)(c) as a part of the state's private activity bond volume cap authorized by the Internal Revenue Code of 1986 and computed under Section 146 of the code.

(b) To promote and encourage the issuance of bonds from the Small Issue Bond Account for manufacturing projects, the division may:

(i) develop campaigns and materials that inform qualified small manufacturing businesses about the existence of the program and the application process;

(ii) assist small businesses in applying for and qualifying for these bonds; or

(iii) develop strategies to lower the cost to small businesses of applying for and qualifying for these bonds, including making arrangements with financial advisors, underwriters, bond counsel, and other professionals involved in the issuance process to provide their services

at a reduced rate when the division can provide them with a high volume of applicants or issues.

Section 2. Section **9-4-503** is amended to read:

9-4-503. Private Activity Bond Review Board.

(1) There is created within the department the Private Activity Bond Review Board, composed of [~~ten~~] 11 members as follows:

(a) [~~four~~] five ex officio members who shall be:

(i) the executive director of the department or [~~his~~] the executive director's designee;

(ii) the director of the Division of Business and Economic Development or the director's designee;

(iii) [~~iii~~] (iii) the state treasurer or [~~his~~] the treasurer's designee;

(iv) [~~iii~~] (iv) the chair of the Board of Regents or [~~his~~] the chair's designee; and

(v) [~~iv~~] (v) the chair of the Utah Housing Corporation or [~~his~~] the chair's designee; and

(b) six local government members who shall be:

(i) three elected or appointed county officials, nominated by the Utah Association of Counties and appointed by the governor with the consent of the Senate; and

(ii) three elected or appointed municipal officials, nominated by the Utah League of Cities and Towns and appointed by the governor with the consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), the terms of office for the local government members of the board of review shall be four-year terms.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Members may be reappointed only once.

(3) (a) If a local government member ceases to be an elected or appointed official of the city or county [~~he~~] the member is appointed to represent, [~~his~~] that membership on the board of review [~~shall terminate~~] terminates immediately and there shall be a vacancy in the membership.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed within 30 days in the manner of the regular appointment for the unexpired term, and

until his successor is appointed and qualified.

(4) (a) The chair of the board of review shall be the executive director of the department or ~~his~~ the executive director's designee.

(b) The chair ~~shall be~~ is nonvoting except in the case of a tie vote.

(5) ~~Five~~ Six members of the board of review constitute a quorum.

(6) Formal action by the board of review ~~shall be by~~ requires a majority vote of a quorum.

(7) (a) ~~(i)~~ Members who are not government employees ~~shall~~ may not receive ~~no~~ compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~[(ii) Members may decline to receive per diem and expenses for their service.]~~

(b) ~~(i)~~ State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~[(ii) State government officer and employee members may decline to receive per diem and expenses for their service.]~~

(c) ~~(i)~~ Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~[(ii) Local government members may decline to receive per diem and expenses for their service].~~

(d) ~~(i)~~ Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~[(ii) Higher education members]~~

(e) Members identified in Subsections (7)(a) through (d) may decline to receive per diem and expenses for their service.

(8) The chair of the board of review ~~[shall serve]~~ serves as the state official designated under state law to make certifications required to be made under Section 146 of the code including~~[-, without limitation,]~~ the certification required by Section 149(e)(2)(F) of the code.

Section 3. Section **9-4-508** is amended to read:

9-4-508. Issuing authorities -- Limitations -- Duties.

(1) (a) ~~[After May 1, 1992, any other]~~ Any law to the contrary notwithstanding, ~~[any]~~ an issuing authority issuing bonds without a certificate of allocation issued under Section 9-4-507, or ~~[any]~~ an issuing authority issuing bonds after the expiration of ~~[any]~~ a certificate of allocation, is not entitled to an allocation of the volume cap for those bonds. ~~[Any]~~

(b) An issuing authority issuing bonds in excess of the amount set forth in the related certificate of allocation is not entitled to an allocation of the volume cap for the excess.

~~[(2) Notwithstanding Subsection 9-4-506(2) to the contrary, the board of review may distribute all available volume cap for calendar year 1992 to the various allotment accounts established in this part as it determines after taking into account generally:]~~

~~[(a) the percentage distributions required by Subsection 9-4-506(2) for subsequent years; and]~~

~~[(b) the purposes for which volume cap has been used or for which allocations of volume cap have been made during calendar year 1992, prior to the effective date of this part.]~~

~~[(3)]~~ (2) Each issuing authority shall:

(a) advise the board of review, within 15 days after the issuance of bonds, of the principal amount of bonds issued under each certificate of allocation by delivering to the board of review a copy of the Form 8038 that was delivered or shall be delivered to the Internal Revenue Service in connection with the bonds, or, if no Form 8038 is required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the board of review with respect to the bonds; and

(b) if all or a stated portion of the bonds for which a certificate of allocation was received will not be issued, advise the board of review in writing, within 15 days of the earlier of:

- (i) the final decision not to issue all or a stated portion of the bonds; or
- (ii) the expiration of the certificate of allocation.

~~[(4)]~~ (3) Failure by an issuing authority to ~~[sø]~~ notify the board of review under Subsection (2), including failure to timely deliver a Form 8038, may, in the sole discretion of the board of review, result in the issuing authority being denied further consideration of applications.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.