

1 **PRIVATE ACTIVITY BOND AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David Clark**

5

LONG TITLE

6 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

11 ▶ increases the membership of the Private Activity Bond Review Board from 10 to 11
12 by adding the director of the Division of Business and Economic Development as
13 an ex officio member;

14 ▶ recognizes the Division of Community Development as an issuing authority entitled
15 to issue bonds from the Small Issue Bond Account;

16 ▶ authorizes the division to promote and assist businesses in applying for and
17 qualifying for private activity bonds; and

18 ▶ makes certain technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides an immediate effective date.

23 **Utah Code Sections Affected:**

24 **AMENDS:**

25 **9-4-202**, as last amended by Chapter 352, Laws of Utah 2004

26 **9-4-503**, as last amended by Chapters 159 and 176, Laws of Utah 2002
27



28 **9-4-508**, as enacted by Chapter 287, Laws of Utah 1992



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

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

32 **9-4-202. Powers and duties of division.**

33 (1) The division shall:

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

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

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

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

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

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

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

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

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

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

59 antipoverty activities; and

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

61 (2) The division may:

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

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

68 (c) in accordance with Part 13, Domestic Violence Shelters, assist in developing,
69 constructing, and improving shelters for victims of domestic violence, as described in Section
70 77-36-1, through loans and grants to nonprofit and governmental entities; and

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

73 (3) (a) The division is recognized as an issuing authority as defined in Subsection
74 9-4-502(7), entitled to issue bonds from the Small Issue Bond Account created in Subsection
75 9-4-506(1)(c) as a part of the state's private activity bond volume cap authorized by the Internal
76 Revenue Code of 1986 and computed under Section 146 of the code.

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

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

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

82 (iii) develop strategies to lower the cost to small businesses of applying for and
83 qualifying for these bonds, including making arrangements with financial advisors,

84 underwriters, bond counsel, and other professionals involved in the issuance process to provide
85 their services at a reduced rate when the division can provide them with a high volume of
86 applicants or issues.

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

88 **9-4-503. Private Activity Bond Review Board.**

89 (1) There is created within the department the Private Activity Bond Review Board,

90 composed of ~~ten~~ 11 members as follows:

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

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

93 (ii) the director of the Division of Business and Economic Development or the

94 director's designee;

95 ~~(ii)~~ (iii) the state treasurer or ~~his~~ the treasurer's designee;

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

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

98 (b) six local government members who shall be:

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

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

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

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

109 (c) Members may be reappointed only once.

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

114 (b) When a vacancy occurs in the membership for any reason, the replacement shall be
115 appointed within 30 days in the manner of the regular appointment for the unexpired term, and
116 until his successor is appointed and qualified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 **9-4-508. Issuing authorities -- Limitations -- Duties.**

152 (1) ~~(a) [After May 1, 1992, any other]~~ Any law to the contrary notwithstanding, ~~[any]~~
 153 an issuing authority issuing bonds without a certificate of allocation issued under Section
 154 9-4-507, or ~~[any]~~ an issuing authority issuing bonds after the expiration of ~~[any]~~ a certificate of
 155 allocation, is not entitled to an allocation of the volume cap for those bonds. ~~[Any]~~

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

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

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

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

165 ~~[(3)]~~ (2) Each issuing authority shall:

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

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

175 (i) the final decision not to issue all or a stated portion of the bonds; or

176 (ii) the expiration of the certificate of allocation.

177 ~~[(4)]~~ (3) Failure by an issuing authority to ~~[sø]~~ notify the board of review under
 178 Subsection (2), including failure to timely deliver a Form 8038, may, in the sole discretion of
 179 the board of review, result in the issuing authority being denied further consideration of
 180 applications.

181 Section 4. **Effective date.**

182 If approved by two-thirds of all the members elected to each house, this bill takes effect

183 upon approval by the governor, or the day following the constitutional time limit of Utah
184 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
185 the date of veto override.

Legislative Review Note
as of 2-2-05 4:43 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0116

Private Activity Bond Amendments

07-Feb-05

7:12 AM

State Impact

No fiscal impact. Costs of administration for the program would be included in the bond applications fees.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst