

BOARD OF WATER RESOURCES AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Sylvia S. Andersen

LONG TITLE

General Description:

This bill amends provisions regarding the financing of a water project.

Highlighted Provisions:

This bill:

▶ defines terms;

▶ allows the Board of Water Resources to:

- accept a bond from private sponsors in lieu of taking title to a project;
- give a preference to a project that is for the benefit of the state or a political

subdivision; and

- consider market conditions and other factors when establishing an interest rate;

and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-10-26, as last amended by Laws of Utah 2007, Chapter 179

73-10-27, as last amended by Laws of Utah 2005, Chapter 25



28 73-10-28, as enacted by Laws of Utah 1978, Chapter 22



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

31 Section 1. Section 73-10-26 is amended to read:

32 **73-10-26. Construction of a project by board -- Ownership and operation --**
33 **Transfer of a water right -- Purchase of a bond from an Indian tribe.**

34 (1) As used in this section:

35 (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.

36 (b) "Bond" means:

37 (i) a written obligation to repay borrowed money, whether denominated a bond, note,
38 warrant, certificate of indebtedness, or otherwise; and

39 (ii) a lease agreement, installment purchase agreement, or other agreement that
40 includes an obligation to pay money.

41 (c) "Division" means the Division of Water Resources created in Section 73-10-18.

42 (d) "Project" means a facility, works, or other real or personal property that:

43 (i) conserves or develops the water or hydroelectric power resources of the state; or

44 (ii) controls flooding.

45 ~~[(+)] (2) (a) The board [of Water Resources], through the division [of Water~~
46 ~~Resources], may construct [works and facilities, including hydroelectric generating works, that~~
47 ~~are necessary and desirable to conserve and develop the water and power resources of the state]~~
48 a project.

49 (b) An electric public utility or a municipality of the state may construct an electrical
50 ~~[facilities]~~ facility incidental to a ~~[hydroelectric]~~ project.

51 (c) If the state constructs the electrical ~~[facilities]~~ facility, the state must first offer the
52 power and energy derived from the hydroelectric generating ~~[plant]~~ project to an electric public
53 ~~[utilities or municipalities]~~ utility or municipality in the state for distribution to electric
54 consumers.

55 ~~[(2)] (3) (a) The board [of Water Resources], through the division [of Water~~
56 ~~Resources], may consider [any] a flood control project [provided for in Title 4, Chapter 18,~~
57 ~~Conservation Commission Act,] in the same manner[;] and apply the same procedures and
58 rules[;] as the board would consider or apply to ~~[any other]~~ another project within its statutory~~

59 authority.

60 (b) If funds controlled by the board [~~of Water Resources~~] are to be used for the flood
61 control project, the planning [~~by the Conservation Commission~~] of the project is subject to the
62 review of the board.

63 (c) If the flood control project is authorized for construction, the plans, specifications,
64 and construction supervision shall be undertaken as prescribed by the board.

65 [~~(3)~~] (4) The board [~~of Water Resources~~] may enter into an agreement for the
66 construction or financing of [~~any~~] a project financed with monies from the Water Resources
67 [~~Construction~~] Conservation and Development Fund with another state, the federal
68 government, a political subdivision of the state, an Indian tribe, or a private corporation.

69 [~~(4) (a) (i) Title to all projects, including water rights,~~]

70 (5) (a) (i) Except as provided by Subsections (5)(a)(ii) and (b), title to a project,
71 including a water right, constructed or acquired with monies from the Water Resources
72 [~~Construction~~] Conservation and Development Fund is vested in the state.

73 [~~(ii) If an incorporated municipality, metropolitan water district, water conservancy~~
74 ~~district, improvement district, special improvement district, special service district, or any other~~
75 ~~political subdivision of the state sponsors a project, the Board of Water Resources may take~~
76 ~~revenue bonds, general obligation bonds, special assessment bonds, or other bonds or~~
77 ~~obligations]~~

78 (ii) The board may take a bond legally issued by the project sponsor in lieu of or in
79 addition to taking title to the project and water [~~rights~~] right.

80 (b) If an Indian tribe sponsors a project, the board [~~of Water Resources~~] may take
81 [~~revenue bonds, general obligation bonds, or other bonds or obligations]~~ a bond legally issued
82 by the tribe, to the extent that federal law allows the tribe to issue [~~bonds~~] a bond, in lieu of
83 taking title to the project and water [~~rights~~] right, if the tribe:

84 (i) waives the defense of sovereign immunity regarding the bond issue in [~~any~~] an
85 action arising out of the issuance or default under the bond; and

86 (ii) agrees in writing that it will not challenge state court jurisdiction over any litigation
87 resulting from default on its [~~obligations~~] obligation in the transaction.

88 (c) Before entering into [~~any~~] an agreement with or purchasing [~~any bonds or~~
89 ~~obligations]~~ a bond from a tribe, the board [~~of Water Resources~~] shall:

90 (i) require that the tribe obtain the written approval of the Secretary of the United
91 States Department of the Interior or the secretary's designee to all aspects of the agreement[;
92 ~~bonds, or obligations~~] or bond;

93 (ii) obtain a legal opinion from a recognized bond counsel certifying:

94 (A) that the tribe has legal authority to:

95 (I) enter into the agreement; or

96 (II) issue the [~~bonds or obligations~~] bond;

97 (B) that the pledge of [~~any assets or revenues~~] an asset or revenue by the tribe as
98 security for the payments under the agreement[~~-, bonds, or obligations~~] or bond is a valid and
99 legally enforceable pledge; and

100 (C) that the agreement[~~-, bonds, or obligations~~] or bond may be enforced in [~~any~~] a
101 court of general jurisdiction in the state; and

102 (iii) determine whether it has sufficient legal recourse against the tribe and against
103 [~~any~~] a security pledged by the tribe in the event of default.

104 [~~(5)~~] (6) (a) The board [~~of Water Resources~~] may own and operate [~~water conservation~~
105 ~~and development works and projects and flood control projects;~~] a project if:

106 (i) the [~~works and projects are~~] project is consistent with [~~plans~~] the plan adopted by
107 the board; and

108 (ii) in the opinion of the board the ownership and operation of the [~~projects~~] project by
109 the board is in the best interest of the state.

110 (b) In the ownership and operation of [~~the projects~~] a project referred to in Subsection
111 [~~(5)~~] (6)(a), the board shall use a water [~~rights~~] right held in its name under authority of Section
112 73-10-19.

113 (c) (i) The board may enter into [~~contracts~~] a contract with another state, the federal
114 government, a political subdivision of the state, an Indian tribe, or a private corporation for
115 operation, maintenance, and administration of the project.

116 (ii) The board may pay the contracting agency a reasonable sum for operation,
117 maintenance, and administration of the project.

118 [~~(6)~~] (7) (a) The board may also:

119 (i) enter into [~~agreements~~] an agreement in which title to [~~projects may be~~] a project is
120 conveyed to a cooperating [~~sponsors~~] project sponsor after charges assessed against the project

121 have been paid to the state in accordance with the terms of the construction [~~agreements or~~
122 ~~amendments to those agreements~~] agreement or amendment to the agreement;

123 (ii) make the water and power available [~~for the use of~~] to the state's citizens who are,
124 in [~~its~~] the board's opinion, best able to [~~utilize it, all~~] use the water and power:

125 (A) that is conserved by [~~any of the projects~~] the project; and

126 (B) to which the state [~~may have~~] has title;

127 (iii) enter into [~~contracts~~] a contract for the use of [~~that~~] the water and power with
128 [~~individuals or with organizations~~] an individual or an organization composed of the state's
129 citizens; and

130 (iv) assess a reasonable fee against [~~any~~] a person using water and power from a
131 project.

132 (b) [~~Any~~] The amount collected over the amount to be returned to the state for payment
133 of the principal, interest, and maintenance of the project shall [~~become part of~~] be deposited in
134 the Water Resources Conservation and Development Fund as established by Section 73-10-24.

135 [~~(7)~~] (8) The board [~~of Water Resources~~] shall retain ownership of a water [~~rights~~]
136 right used for [~~projects~~] a project owned and operated by the board unless:

137 (a) the water [~~rights~~] right originally held by a cooperating [~~sponsors are~~] project
138 sponsor is conveyed to the project sponsor upon payment to the state of charges assessed
139 against the project in accordance with the terms of the construction [~~agreements or~~
140 ~~amendments to those agreements~~] agreement or an amendment to the agreement; or

141 (b) the board transfers [~~any~~] an unperfected water right held by [~~it~~] the board that is not
142 being [~~utilized~~] used in a state-owned project to a political subdivision of the state, [~~any~~] an
143 agency of the federal government, or a nonprofit water company.

144 [~~(8) Any~~] (9) A transfer of the board's water [~~rights~~] right shall be made to the entity
145 that is best able to use the water [~~rights~~] right for the benefit of the state's citizens.

146 Section 2. Section **73-10-27** is amended to read:

147 **73-10-27. Project priorities -- Considerations -- Determinations of feasibility --**
148 **Bids and contracts -- Definitions -- Retainage.**

149 (1) As used in this section:

150 (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.

151 (b) "Estimated cost" means the cost of the labor, material, and equipment necessary for

152 construction of the contemplated project.

153 (c) "Lowest responsible bidder" means a licensed contractor:

154 (i) who:

155 (A) submits the lowest bid; and

156 (B) furnishes a payment bond and a performance bond under Sections 14-1-18 and
 157 63-56-504; and

158 (ii) whose bid:

159 (A) is in compliance with the invitation for a bid; and

160 (B) meets the plans and specifications.

161 ~~[(1)]~~ (2) In considering the ~~[priorities for projects]~~ priority for a project to be built or
 162 financed with funds made available under Section 73-10-24, the board shall give preference to
 163 ~~[those projects which]~~ a project that:

164 ~~(a) [are]~~ is sponsored by, or for the benefit of, the state or a political subdivision of the
 165 state;

166 ~~(b) [meet]~~ meets a critical local need;

167 ~~(c) [have]~~ has greater economic feasibility;

168 ~~(d)~~ will yield revenue to the state within a reasonable time or will return a reasonable
 169 rate of interest, based on financial feasibility; and

170 ~~(e) [meet]~~ meets other considerations deemed necessary by the board, including~~[-but~~
 171 ~~not limited to;]~~ wildlife management and recreational needs.

172 ~~[(2)]~~ (3) (a) In determining the economic feasibility, the board shall establish a
 173 benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects.

174 (b) In considering whether a project should be built, the benefit-to-cost ratio for each
 175 project shall be weighted based on the relative cost of the project.

176 (c) A project, when considered in total with all other projects constructed under this
 177 chapter and still the subject of a repayment contract, may not cause the accumulative
 178 benefit-to-cost ratio of the projects to be less than one to one.

179 ~~[(3) Under no circumstances may a project be built that is not]~~

180 (4) A project may not be built if the project is not:

181 (a) in the public interest, as determined by the board ~~[of Water Resources, and no~~
 182 ~~project may be built which is not];~~ or

183 (b) adequately designed based on sound engineering and geologic considerations.

184 ~~[(4) The board in the preparation of]~~

185 (5) In preparing a project [for construction] constructed by the board, the board shall

186 [comply with the following]:

187 ~~[(a) All flood control projects involving cities and counties]~~

188 (a) based on a competitive bid, award a contract for:

189 (i) a flood control project:

190 (A) involving a city or county; and

191 (B) costing in excess of \$35,000[~~, and all contracts for~~];

192 (ii) the construction of a storage reservoir in excess of 100 acre-feet; or [for]

193 (iii) the construction of a hydroelectric generating facility[~~, shall be awarded on the~~

194 basis of competitive bid. Advertisement for competitive bids shall be published by the board];

195 (b) publish an advertisement for a competitive bid:

196 (i) at least once a week for three consecutive weeks in a newspaper with general

197 circulation in the state[~~. The advertisement shall indicate that the board~~], with the last date of

198 publication appearing at least five days before the schedule bid opening; and

199 (ii) indicating that the board:

200 (A) will award the contract to the lowest responsible bidder [but that it]; and

201 (B) reserves [to itself] the right to reject any and all bids[~~. The date of last publication~~

202 shall appear at least five days before the scheduled bid opening.];

203 ~~[(b) If all initial bids on the project are rejected, the board shall]~~

204 (c) readvertise the project in the manner specified in Subsection [(4)(a). If no

205 satisfactory bid is received by the board upon the readvertisement of the project, it may proceed

206 to construct the project but only in accordance with the plans and specifications used to

207 calculate the estimated cost of the project.] (5)(b) if the board rejects all of the initial bids on

208 the project; and

209 ~~[(c) The board shall]~~ (d) keep an accurate record of all facts and representations relied

210 upon in preparing [its] the board's estimated cost for [any] a project [which] that is subject to

211 the competitive bidding requirements of this section.

212 ~~[(d) For the purposes of this Subsection (4):]~~

213 (i) "Estimated cost" means the cost of all labor, material, and equipment necessary for

214 ~~construction of the contemplated project.]~~

215 ~~[(ii) "Lowest responsible bidder" means any licensed contractor who submits the~~
216 ~~lowest bid, whose bid is in compliance with the invitation for bids, whose bid meets the plans~~
217 ~~and specifications, and who furnishes bonds under Sections 14-1-18 and 63-56-504.]~~

218 (6) If no satisfactory bid is received by the board upon the readvertisement of the
219 project in accordance with Subsection (5), the board may proceed to construct the project in
220 accordance with the plan and specifications used to calculate the estimated cost of the project.

221 ~~[(5)]~~ (7) If [any] a payment on a contract with a private contractor for construction of
222 [projects] a project under this section is retained or withheld, it shall be retained or withheld
223 and released as provided in Section 13-8-5.

224 Section 3. Section **73-10-28** is amended to read:

225 **73-10-28. Charges for use -- Interest.**

226 ~~[Charges for use of water, power, or facilities shall be established on the basis of~~
227 ~~contractual agreements]~~

228 (1) As used in this section, "board" means the Board of Water Resources created in
229 Section 73-10-1.5.

230 (2) The board shall establish:

231 (a) a charge for the use of water, power, or a facility based on:

232 (i) a contractual agreement approved by the board [of Water Resources for projects] for
233 a project owned by the state [based on]; and

234 (ii) the ability of an individual project to return the investment to the state[. Where the
235 board intends to enter into a contract to finance a project or portion of a project sponsored by a
236 water conservancy district or other political subdivision of the state, the board shall establish a
237 rate of interest to be charged based on]; and

238 (b) an interest rate for the money the board lends to finance a project based on:

239 (i) market conditions;

240 (ii) the repayment ability of the project[-]; and

241 (iii) other factors considered relevant by the board.

Legislative Review Note
as of 1-23-08 5:36 PM

Office of Legislative Research and General Counsel

S.B. 170 - Board of Water Resources Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
