

1 **STATE BONDING COMMISSION BONDING AUTHORITY**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Bradley G. Last**

5 Senate Sponsor: Dennis E. Stowell

6

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions in the State Financing Consolidation Act to require
10 legislative approval before bonds are authorized or issued under the Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ clarifies and simplifies existing language;
- 14 ▶ requires the State Bonding Commission to obtain legislative approval before it
15 authorizes or issues bonds under the authority of the State Financing Consolidation
16 Act; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **63B-1b-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382

25 **63B-1b-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382

26 ENACTS:

27 **63B-1b-103**, Utah Code Annotated 1953



28

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

30 Section 1. Section **63B-1b-103** is enacted to read:

31 **63B-1b-103. Limitation on issuance of bonds -- Legislative approval required.**

32 No bonds may be authorized or issued under this chapter without the prior approval of
33 the Legislature.

34 Section 2. Section **63B-1b-401** is amended to read:

35 **63B-1b-401. Pledge of agency bonds to pay revenue bonds -- Contents of**
36 **financing agreements -- Use of money received by authorizing agencies.**

37 (1) [~~With~~] Subject to the requirements of this chapter, and with the approval of the
38 relevant authorizing agency, the State Bonding Commission may pledge, assign, or otherwise
39 transfer any agency bonds, any money payable on or with respect to them, any legally available
40 money or other security administered by an authorizing agency, or any combination of bonds,
41 money, or other security to provide for the payment of revenue bonds issued under Section
42 63B-1b-402 and the payment of any amounts due under agreements and contracts described in
43 Subsection 63B-1b-402(9).

44 (2) (a) Before issuing revenue bonds under Section 63B-1b-402, the commission shall
45 enter into a financing agreement with the appropriate authorizing agency or agencies.

46 (b) This agreement shall specify:

47 (i) any agency bonds, money, or other security to be pledged by the commission to
48 provide for the payment of the revenue bonds;

49 (ii) the amount to be paid to the order of the authorizing agency or agencies for the
50 agency bonds, money, or other security; and

51 (iii) other matters that the commission considers necessary or appropriate.

52 (3) The amounts received by each authorizing agency from the proceeds of the revenue
53 bonds, together with all amounts paid to the authorizing agencies pursuant to Subsection
54 63B-1b-402(10), shall be applied by the authorizing agency as authorized by the law creating
55 or authorizing the loan or grant program of the authorizing agency.

56 Section 3. Section **63B-1b-402** is amended to read:

57 **63B-1b-402. Commission may authorize revenue bonds -- Contents of bond**
58 **document -- Special and reserve funds -- Limitation on liability -- Restoration of money**

59 **in reserve funds -- Payment of bonds and other technical requirements -- Refunding --**
60 **Report to Division of Finance.**

61 (1) (a) In order to provide authorizing agencies with an alternative method of
62 liquidating agency bonds and~~[, by doing so, providing authorizing agencies]~~ with additional
63 funds to further the purposes of the authorizing agencies, the commission may authorize the
64 ~~[issuance of]~~ state to issue revenue bonds ~~[from time to time by the state]~~ subject to the
65 requirements of this chapter.

66 (b) ~~[These]~~ The revenue bonds shall be payable solely from a special fund established
67 by the state treasurer as provided in Subsection (4).

68 (c) Revenue bonds may be sold at public or private sale and may be issued in one or
69 more series.

70 (2) Revenue bonds may be authorized, issued, and sold by the commission on behalf of
71 the state at a time or times and in a manner set forth in a bond document that provides for:

72 (a) the terms and conditions of sale, including price, whether at, below or above face
73 value;

74 (b) interest rates, including a variable rate;

75 (c) authorized denomination;

76 (d) maturity dates;

77 (e) form;

78 (f) manner of execution;

79 (g) manner of authentication;

80 (h) place and medium of payment;

81 (i) redemption terms;

82 (j) authorized signatures of public officials; and

83 (k) other provisions and details considered necessary or appropriate.

84 (3) To the extent set forth in the resolution, the proceeds of revenue bonds may be used
85 for the purposes set forth in Subsection (1) and to:

86 (a) provide for any necessary or desirable reserve fund as provided for in Subsection
87 (5); and

88 (b) pay fees, charges, and other amounts related to the issuance and sale of the revenue
89 bonds.

90 (4) (a) As provided in the bond document, the principal of, premium, if any, and
91 interest on, any issue of revenue bonds is payable solely from and secured by one or more
92 special funds consisting of:

93 (i) the pledge and assignment of any agency bonds, including all amounts payable on or
94 with respect to them, and other [~~monies~~] money and security, as provided for in an agreement
95 entered into under Subsection 63B-1b-401(2);

96 (ii) amounts on deposit in the reserve fund, if any, established under Subsection (5);

97 (iii) amounts available pursuant to any security device or credit enhancement device
98 that the commission authorizes for the purpose of improving the marketability of the revenue
99 bonds; and

100 (iv) other amounts available and pledged by the commission to secure payment of that
101 issue of revenue bonds.

102 (b) Owners of revenue bonds do not have recourse against the general funds or general
103 credit of the state or its political subdivisions or agencies, but this limitation does not limit or
104 alter the obligations of political subdivisions on agency bonds in any manner.

105 (c) Revenue bonds do not constitute nor give rise to a general obligation or liability of,
106 or constitute a charge or lien against, the general credit or taxing power of the state or its
107 political subdivisions or agencies, including any authorizing agency.

108 (d) Revenue bonds shall contain on their face a statement that:

109 (i) the revenue bonds are payable solely from the sources set forth in this Subsection
110 (4) and specified in the bond document with respect to the revenue bonds;

111 (ii) neither the state nor any political subdivision of the state is obligated to pay the
112 revenue bonds; and

113 (iii) neither the faith and credit nor the taxing power of the state or any of its political
114 subdivisions is pledged to the payment of principal or redemption price of, or premium, if any,
115 or interest on the revenue bonds.

116 (e) Revenue bonds do not constitute debt of the state within the meaning of Utah
117 Constitution Article XIII, Sec. 5 (3) or Article XIV, Sec. 1.

118 (5) (a) The commission may establish a reserve fund with respect to any issue of
119 revenue bonds.

120 (b) If a reserve fund is established, the bond document relating to that issue of revenue

121 bonds shall specify:

122 (i) the minimum amount that is required to be on deposit in the reserve fund;

123 (ii) the amount of sale proceeds from the sale of that issue of revenue bonds that shall
124 be deposited in the reserve fund; and

125 (iii) the manner in which any deficiency in the reserve fund shall be replenished.

126 (c) (i) On or before the first day of December of each year, the state treasurer shall
127 certify to the governor and the director of the Division of Finance the amount, if any, that may
128 be required to restore all reserve funds established to the minimum amount specified by the
129 state treasurer with respect to each reserve fund.

130 (ii) The governor may request an appropriation from the Legislature equal to the
131 certified amount in order to restore each reserve fund to the specified minimum amount.

132 (6) (a) (i) The commission may provide in the bond document that any signature of a
133 public official authorized to sign revenue bonds may be by the facsimile signature of that
134 official imprinted, engraved, stamped, or otherwise placed on the revenue bonds.

135 (ii) If all signatures of public officials on the revenue bonds are facsimile signatures,
136 the bond document shall provide for a manual authenticating signature on the revenue bonds by
137 or on behalf of a designated authenticating agent.

138 (iii) If an official ceases to hold office before delivery of the revenue bonds signed by
139 that official, the signature or facsimile signature of the official is valid and sufficient for all
140 purposes.

141 (b) A facsimile of the seal of the state may be imprinted, engraved, stamped, or
142 otherwise placed on the revenue bonds.

143 (7) (a) The commission may provide in the bond document for the replacement of lost,
144 destroyed, stolen, or mutilated revenue bonds or for the exchange of revenue bonds after
145 issuance for revenue bonds of smaller or larger denominations.

146 (b) Revenue bonds in changed denominations shall:

147 (i) be exchanged for the original revenue bonds in the aggregate principal amounts and
148 in a manner that prevents the duplication of interest; and

149 (ii) bear interest at the same rate, be of the same series, mature on the same date, and
150 be as nearly as practicable in the same form as the original revenue bonds.

151 (8) (a) (i) Revenue bonds may be registered as to both principal and interest or may be

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

154 (ii) The commission may provide for the services and payment for the services of one
155 or more financial institutions, other entities or persons, or nominees, within or outside the state,
156 for:

- 157 (A) authentication;
- 158 (B) registration;
- 159 (C) transfer, including record, bookkeeping, or book entry functions;
- 160 (D) exchange; and
- 161 (E) payment.

162 (b) The records of ownership, registration, transfer, and exchange of the revenue
163 bonds, and of persons to whom payment with respect to them is made, are classified as private
164 or protected as defined in Title 63G, Chapter 2, Government Records Access and Management
165 Act.

166 (c) The revenue bonds and any evidences of participation interests in the revenue bonds
167 may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made
168 to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the
169 Legislature relating to the registration of obligations enacted to meet the requirements of
170 Section 149 (a), Internal Revenue Code of 1986, or any comparable predecessor or successor
171 provision, and applicable regulations.

172 (9) (a) The commission may authorize the execution and delivery of whatever
173 agreements and contracts that the commission considers necessary and appropriate in
174 connection with the issuance of revenue bonds.

175 (b) These agreements and contracts may include agreements and contracts with
176 financial and other institutions for financial advisory services, trustee services, insurance,
177 letters of credit, reimbursement agreements, tender agreements, put agreements, repurchase
178 agreements, and indexing and tender agent agreements to:

- 179 (i) facilitate the sale of the revenue bonds; or
- 180 (ii) secure or provide liquidity to support any agreement, obligation, or contract entered
181 into by an authorized officer on behalf of the state in connection with:

182 (A) the issuance and sale of the revenue bonds;

183 (B) any repurchase, remarketing, or other pledge of the revenue bonds; and

184 (C) any insurance, repurchase, remarketing, tender, put, letter of credit, or agreement,
185 obligation, or contract entered into in connection with them, including payment of fees,
186 charges, or other amounts coming due under agreements entered into with financial or other
187 institutions on behalf of the state.

188 (10) When all revenue bonds of an issue have been paid, or provision for their payment
189 has been made, ~~[there]~~ the following shall be transferred to the appropriate authorizing agency
190 or agencies, in the amounts and in the manner that the commission considers fair and equitable,
191 and to the extent not required to secure payment of the revenue bonds and related fees, charges,
192 and other amounts:

193 (a) all amounts remaining on deposit in any reserve fund established with respect to the
194 issue of revenue bonds; and

195 (b) all other amounts and all agency bonds held by the commission and any trustee and
196 pledged to the payment of the revenue bonds.

197 (11) (a) The state treasurer or the commission may create any funds and accounts
198 necessary to carry out the purposes of this section.

199 (b) (i) The state treasurer shall administer and maintain those funds and accounts.

200 (ii) The state treasurer may invest all ~~[monies]~~ money held in those funds and accounts
201 in accordance with Title 51, Chapter 7, State Money Management Act, and in accordance with
202 the bond document or any other agreement entered into on behalf of the state as authorized by
203 the bond document.

204 (iii) The commission may not approve the bond document or other agreement with
205 respect to the investment and application of ~~[these monies]~~ the money unless the state treasurer
206 has affirmatively approved any investment provisions contained in the bond document or other
207 agreement.

208 (c) All income from the ~~[monies]~~ money invested in a fund or account created under
209 this Subsection (11) shall accrue to the benefit of the fund or account and shall be used for the
210 purpose for which the fund or account was established.

211 (12) ~~[(a)]~~ The commission may authorize the issuance of refunding revenue bonds of
212 the state in accordance with Title 11, Chapter 27, Utah Refunding Bond Act, for the purpose of
213 refunding any revenue bonds~~[-(b) The state is]~~ and for the purposes of that act, the state shall

214 be considered a "public body" and the commission its "governing body." [~~for purposes of that~~
215 ~~act.~~]

216 (13) (a) Revenue bonds may not be issued under this [~~section~~] chapter until an
217 authorized official finds and certifies that all conditions precedent to the issuance of the
218 revenue bond, including the requirements of Section 63B-1b-103, have been satisfied.

219 (b) A recital on any revenue bond of a finding and certification conclusively establishes
220 the completion and satisfaction of all conditions [~~of~~] required in this section.

221 (14) Revenue bonds, interest paid on revenue bonds, and any income from revenue
222 bonds [~~is~~] are not taxable within this state for any purpose, except for the corporate franchise
223 tax.

224 (15) (a) Revenue bonds are legal investments for all state trust funds, insurance
225 companies, banks, trust companies, and the State School Fund.

226 (b) Revenue bonds may also be used as collateral to secure legal obligations.

227 (16) Immediately upon the issuance of each issue of revenue bonds, an authorized
228 official shall make a verified return to the Division of Finance of:

229 (a) the aggregate principal amount of revenue bonds issued;

230 (b) the amount of proceeds of sale of revenue bonds received by the state;

231 (c) the amount paid to the authorizing agency or agencies for the agency bonds;

232 (d) the total amount of all fees and expenses relating to the issuance of the revenue
233 bonds;

234 (e) the amount of sale proceeds of the revenue bonds used to pay fees and expenses;
235 and

236 (f) the amount of sale proceeds of the revenue bonds deposited in the reserve fund
237 established with respect to the issue of revenue bonds, if any.

Legislative Review Note
as of 1-3-11 11:45 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 67

SHORT TITLE: **State Bonding Commission Bonding Authority**

SPONSOR: **Last, B.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.