

SB0115S02 compared with SB0115S01

~~{deleted text}~~ shows text that was in SB0115S01 but was deleted in SB0115S02.

inserted text shows text that was not in SB0115S01 but was inserted into SB0115S02.

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~~{Senator Kirk A. Cullimore}~~Representative Brady Brammer proposes the following substitute bill:

BONDING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill modifies state and local general obligation bond provisions.

Highlighted Provisions:

This bill:

- ▶ provides that a first lien is created on ad valorem taxes for the payment of principal and interest on the local political subdivision's general obligation bonds;
- ▶ provides that a local school board may use revenues remaining from an ad valorem tax levied for school district technology programs or projects after the principal, premium, and interest on the district's bonds have been paid for the applicable period for which the taxes were levied;
- ▶ provides that a lien does not attach to any technology programs or projects paid for

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from the remaining tax revenues;

- ▶ provides that a general obligation bond issued and sold by or on behalf of a local political subdivision is secured by a first statutory lien on all revenues received pursuant to the levy and collection of ad valorem taxes, that:
 - arises and attaches immediately to the ad valorem tax revenues without the need for any action or authorization by the local political subdivision;
 - is valid and binding from the time the general obligation bonds are executed and delivered; and
 - is effective, binding, and enforceable against the local political subdivision, its successors, transferees, and creditors, and all others asserting rights to the ad valorem tax revenues;
- ▶ requires that amounts appropriated or added to the tax levy to pay principal of, premium, and interest on general obligation bonds be applied to the payment of those bonds;
- ▶ modifies a provision relating to the Legislature's appropriation of money each fiscal year to pay the principal, premium, and interest due on the State's outstanding general obligation bonds;
- ▶ authorizes the issuance of general obligation bonds for Department of Transportation projects; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-14-310, as last amended by Laws of Utah 2018, Chapter 288

11-14-501, as last amended by Laws of Utah 2007, Chapter 272

63J-1-205.1, as enacted by Laws of Utah 2015, Chapter 175

[72-2-124](#), as last amended by Laws of Utah 2019, Chapters 327 and 479

ENACTS:

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63B-30-101, Utah Code Annotated 1953

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

Section 1. Section **11-14-310** is amended to read:

11-14-310. General obligation bonds -- Levy and collection of taxes.

(1) (a) (i) Any bonds issued under this chapter [~~in such manner~~] that [~~they~~] are not payable solely from revenues other than those derived from ad valorem taxes are full general obligations of the local political subdivision[~~, for~~].

(ii) The local political subdivision's full faith and credit is pledged for the prompt and punctual payment of principal of and interest on [~~which the full faith and credit of the local political subdivision are pledged, and the~~] the local political subdivision's general obligation bonds.

(iii) A local political subdivision is [~~hereby expressly~~] required, regardless of any limitations [~~which~~] that may otherwise exist on the amount of taxes [~~which~~] that the local political subdivision may levy, to provide for the annual levy and collection [~~annually~~] of ad valorem taxes, without limitation as to the rate or amount, on all taxable property in the local political subdivision fully sufficient for [~~such purpose~~] the payment of principal and interest on the local political subdivision's general obligation bonds as the principal and interest become due.

(iv) If by law ad valorem taxes for the local political subdivision are levied by a board other than its governing body[~~;~~]:

(A) the taxes [~~for which provision is herein made~~] shall be levied by [~~such~~] the other board; and

(B) the local political subdivision shall [~~be under the duty in due season in~~], each year, [~~to~~] provide [~~such other~~] the levying board with all information necessary to [~~the~~] levy [~~of~~] the taxes in the required amount.

(v) [~~Such taxes~~] Taxes levied under Subsection (1)(a)(iv) shall be levied and collected by the same officers, at the same time, and in the same manner as are other taxes levied for the local political subdivision.

(b) The pledge of the taxes levied under this section shall constitute an automatically arising first lien on the taxes as provided in Section 11-14-501.

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~~(b)~~ (c) (i) A local school board may use revenues remaining from a tax levied under this section for school district technology programs or projects after the principal of and premium and interest on the district's general obligation bonds have been paid for the applicable period for which the taxes were levied.

(ii) A lien created pursuant to Section 11-14-501 does not attach to any technology programs or projects paid for from the remaining tax revenues under Subsection (1)(c)(i).

(2) (a) If ~~[any]~~ a local political subdivision ~~[shall neglect]~~ neglects or ~~[fail]~~ fails for any reason to levy or collect or to cause to be levied or collected sufficient taxes for the prompt and punctual payment of such principal and interest, ~~[any]~~ a person in interest may enforce levy and collection ~~[thereof in any]~~ of sufficient taxes in a court having jurisdiction of the subject matter~~[-and any]~~.

(b) A suit, action, or proceeding brought by ~~[such]~~ a person in interest under Subsection (2)(a) shall be a preferred cause and shall be heard and disposed of without delay.

(c) All provisions of the constitution and laws relating to the collection of county and municipal taxes and tax sales ~~[shall also]~~ apply to and regulate the collection of the taxes levied pursuant to this section, through the officer whose duty it is to collect the taxes and money due the local political subdivision.

Section 2. Section **11-14-501** is amended to read:

11-14-501. Creation and perfection of government security interests.

(1) As used in this section:

(a) "Bonds" means any bond, note, lease, or other obligation of a governmental unit.

(b) (i) "General obligation bond" means a bond, note, warrant, certificate of indebtedness, or other obligation of a local political subdivision that:

(A) is payable in whole or in part from revenues derived from ad valorem taxes; and

(B) constitutes an indebtedness within the meaning of any applicable constitutional or statutory debt limitation.

(ii) "General obligation bond" includes a general obligation tax, revenue, or bond anticipation note issued by a local political subdivision that is payable in whole or in part from revenues derived from ad valorem taxes.

~~(b)~~ (c) "Governmental unit" has the meaning assigned in Section 70A-9a-102.

~~(c)~~ (d) "Pledge" means the creation of a security interest of any kind.

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~~[(d)]~~ (e) "Property" means any property or interests in property, other than real property.

~~[(e)]~~ (f) "Security agreement" means any resolution, ordinance, indenture, document, or other agreement or instrument under which the revenues, fees, rents, charges, taxes, or other property are pledged to secure the bonds.

(2) This section expressly governs the creation, perfection, priority, and enforcement of a security interest created by the state or a governmental unit of the state, notwithstanding anything in Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, to the contrary.

(3) (a) The revenues, fees, rents, charges, taxes, or other property pledged by a governmental unit for the purpose of securing its bonds are immediately subject to the lien of the pledge.

(b) (i) The lien is a perfected lien upon the effective date of the security agreement.

(ii) The physical delivery, filing, or recording of a security agreement or financing statement under the Uniform Commercial Code or otherwise, or any other similar act, is not necessary to perfect the lien.

(c) The lien of any pledge is valid, binding, perfected, and enforceable from the time the pledge is made.

(d) The lien of the pledge has priority:

(i) based on the time of the creation of the pledge unless otherwise provided in the security agreement; and

(ii) as against all parties having claims of any kind in tort, contract, or otherwise against the governmental unit, regardless of whether or not the parties have notice of the lien.

(e) Each pledge and security agreement made for the benefit or security of any of the bonds shall continue to be effective until:

(i) the principal, interest, and premium, if any, on the bonds have been fully paid;

(ii) provision for payment has been made; or

(iii) the lien created by the security agreement has been released by agreement of the parties in interest or as provided by the security agreement that created the lien.

(4) (a) General obligation bonds issued and sold by or on behalf of a local political subdivision shall be secured by a first statutory lien on all revenues received pursuant to the

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levy and collection of ad valorem taxes.

(b) The lien described in Subsection (4)(a):

(i) arises and attaches immediately to the ad valorem tax revenues without the need for any action or authorization by the local political subdivision;

(ii) is valid and binding from the time the general obligation bonds are executed and delivered; and

(iii) is effective, binding, and enforceable against the local political subdivision, its successors, transferees, and creditors, and all others asserting rights to the ad valorem tax revenues.

(c) A lien described in Subsection (4)(a) is enforceable against the parties described in Subsection (4)(b)(iii):

(i) regardless of whether the parties described in Subsection (4)(b)(iii) have notice of the lien; and

(ii) without the need for any physical delivery, recordation, filing, or further action.

(5) Any amounts appropriated or added to the tax levy to pay principal of and premium and interest on general obligation bonds:

(a) shall be applied solely to the payment of those general obligation bonds; and

(b) may not be used for any other purpose, except as provided by law.

(6) This section applies to all revenues received pursuant to the levy and collection of the ad valorem tax regardless of the date on which the general obligation bonds were issued.

(7) This section applies to all bonds, including bonds issued before or after the effective date of this section.

Section 3. Section **63B-30-101** is enacted to read:

Part 3. General Obligation Bonds

63B-30-101. General obligation bonds for transportation projects.

(1) As used in this section, "transportation projects" means Department of Transportation projects described in Subsection 63B-27-101(2).

(2) (a) When the Department of Transportation certifies to the commission that the requirements of Subsection 72-2-124(7) have been met and certifies the amount of bond proceeds that the commission needs to provide funding for the transportation projects for the current or next fiscal year, the commission may issue and sell general obligation bonds in an

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amount equal to the certified amount, plus additional amounts necessary to pay costs of issuance, to pay capitalized interest, and to fund any existing debt service reserve requirements, not to exceed 1% of the certified amount.

(b) The commission may not issue general obligation bonds authorized under this section if the issuance of the general obligation bonds would result in the total current outstanding general obligation debt of the state exceeding 50% of the limitation described in the Utah Constitution, Article XIV, Section 1.

(3) The commission may issue general obligation bonds as provided in this section.

(4) (a) The total amount of bonds to be issued under this section may not exceed \$89,510,000 for acquisition and construction proceeds, plus additional amounts necessary to pay costs of issuance, to pay capitalized interest, and to fund any existing debt service reserve requirements, with the total amount of the bonds not to exceed \$92,000,000.

(5) The commission shall ensure that proceeds from the issuance of bonds under this section are provided to the Department of Transportation for use by the Department of Transportation to pay all or part of the cost of the transportation projects, including:

(a) interest estimated to accrue on the bonds authorized in this section until the completion of construction of the transportation project, plus a period of 12 months after the end of construction; and

(b) all related engineering, architectural, and legal fees.

(6) (a) The Department of Transportation may enter into agreements related to the transportation projects before the receipt of proceeds of bonds issued under this section.

(b) The state intends to use proceeds of tax-exempt bonds to reimburse itself for expenditures for costs of the transportation projects.

Section 4. Section **63J-1-205.1** is amended to read:

63J-1-205.1. Legislature to pay debt service first.

[In appropriating money from the General Fund, the] The Legislature shall appropriate money each fiscal year sufficient to [debt service] pay the principal, premium, and interest due on the state's outstanding general obligation bonds before making any other appropriation in the fiscal year.

Section 5. Section **72-2-124** is amended to read:

72-2-124. Transportation Investment Fund of 2005.

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(1) There is created a capital projects fund entitled the Transportation Investment Fund of 2005.

(2) The fund consists of money generated from the following sources:

(a) any voluntary contributions received for the maintenance, construction, reconstruction, or renovation of state and federal highways;

(b) appropriations made to the fund by the Legislature;

(c) registration fees designated under Section 41-1a-1201;

(d) the sales and use tax revenues deposited into the fund in accordance with Section 59-12-103; and

(e) revenues transferred to the fund in accordance with Section 72-2-106.

(3) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(4) (a) Except as provided in Subsection (4)(b), the executive director may only use fund money to pay:

(i) the costs of maintenance, construction, reconstruction, or renovation to state and federal highways prioritized by the Transportation Commission through the prioritization process for new transportation capacity projects adopted under Section 72-1-304;

(ii) the costs of maintenance, construction, reconstruction, or renovation to the highway projects described in Subsections 63B-18-401(2), (3), and (4);

(iii) principal, interest, and issuance costs of bonds authorized by Section 63B-18-401 minus the costs paid from the County of the First Class Highway Projects Fund in accordance with Subsection 72-2-121(4)(f);

(iv) for a fiscal year beginning on or after July 1, 2013, to transfer to the 2010 Salt Lake County Revenue Bond Sinking Fund created by Section 72-2-121.3 the amount certified by Salt Lake County in accordance with Subsection 72-2-121.3(4)(c) as necessary to pay the debt service on \$30,000,000 of the revenue bonds issued by Salt Lake County;

(v) principal, interest, and issuance costs of bonds authorized by Section 63B-16-101 for projects prioritized in accordance with Section 72-2-125;

(vi) all highway general obligation bonds that are intended to be paid from revenues in the Centennial Highway Fund created by Section 72-2-118;

(vii) for fiscal year 2015-16 only, to transfer \$25,000,000 to the County of the First

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Class Highway Projects Fund created in Section 72-2-121 to be used for the purposes described in Section 72-2-121; and

(viii) if a political subdivision provides a contribution equal to or greater than 40% of the costs needed for construction, reconstruction, or renovation of paved pedestrian or paved nonmotorized transportation for projects that:

(A) mitigate traffic congestion on the state highway system;

(B) are part of an active transportation plan approved by the department; and

(C) are prioritized by the commission through the prioritization process for new transportation capacity projects adopted under Section 72-1-304.

(b) The executive director may use fund money to exchange for an equal or greater amount of federal transportation funds to be used as provided in Subsection (4)(a).

(5) (a) Except as provided in Subsection (5)(b), the executive director may not use fund money, including fund money from the Transit Transportation Investment Fund, within the boundaries of a municipality that is required to adopt a moderate income housing plan element as part of the municipality's general plan as described in Subsection 10-9a-401(3), if the municipality has failed to adopt a moderate income housing plan element as part of the municipality's general plan or has failed to implement the requirements of the moderate income housing plan as determined by the results of the Department of Workforce Service's review of the annual moderate income housing report described in Subsection 35A-8-803(1)(a)(vii).

(b) Within the boundaries of a municipality that is required under Subsection 10-9a-401(3) to plan for moderate income housing growth but has failed to adopt a moderate income housing plan element as part of the municipality's general plan or has failed to implement the requirements of the moderate income housing plan as determined by the results of the Department of Workforce Service's review of the annual moderate income housing report described in Subsection 35A-8-803(1)(a)(vii), the executive director:

(i) may use fund money in accordance with Subsection (4)(a) for a limited-access facility;

(ii) may not use fund money for the construction, reconstruction, or renovation of an interchange on a limited-access facility;

(iii) may use Transit Transportation Investment Fund money for a multi-community fixed guideway public transportation project; and

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(iv) may not use Transit Transportation Investment Fund money for the construction, reconstruction, or renovation of a station that is part of a fixed guideway public transportation project.

(6) (a) Except as provided in Subsection (6)(b), the executive director may not use fund money, including fund money from the Transit Transportation Investment Fund, within the boundaries of the unincorporated area of a county, if the county is required to adopt a moderate income housing plan element as part of the county's general plan as described in Subsection 17-27a-401(3) and if the county has failed to adopt a moderate income housing plan element as part of the county's general plan or has failed to implement the requirements of the moderate income housing plan as determined by the results of the Department of Workforce Service's review of the annual moderate income housing report described in Subsection 35A-8-803(1)(a)(vii).

(b) Within the boundaries of the unincorporated area of a county where the county is required under Subsection 17-27a-401(3) to plan for moderate income housing growth but has failed to adopt a moderate income housing plan element as part of the county's general plan or has failed to implement the requirements of the moderate income housing plan as determined by the results of the Department of Workforce Service's review of the annual moderate income housing report described in Subsection 35A-8-803(1)(a)(vii), the executive director:

(i) may use fund money in accordance with Subsection (4)(a) for a limited-access facility;

(ii) may not use fund money for the construction, reconstruction, or renovation of an interchange on a limited-access facility;

(iii) may use Transit Transportation Investment Fund money for a multi-community fixed guideway public transportation project; and

(iv) may not use Transit Transportation Investment Fund money for the construction, reconstruction, or renovation of a station that is part of a fixed guideway public transportation project.

(7) (a) Before bonds authorized by Section 63B-18-401 [or], 63B-27-101, or 63B-30-101 may be issued in any fiscal year, the department and the commission shall appear before the Executive Appropriations Committee of the Legislature and present the amount of bond proceeds that the department needs to provide funding for the projects identified in

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Subsections 63B-18-401(2), (3), and (4) [or], Subsection 63B-27-101(2), or Subsection 63B-30-101(1) for the current or next fiscal year.

(b) The Executive Appropriations Committee of the Legislature shall review and comment on the amount of bond proceeds needed to fund the projects.

(8) The Division of Finance shall, from money deposited into the fund, transfer the amount of funds necessary to pay principal, interest, and issuance costs of bonds authorized by Section 63B-18-401 [or], 63B-27-101, or 63B-30-101 in the current fiscal year to the appropriate debt service or sinking fund.

(9) (a) There is created in the Transportation Investment Fund of 2005 the Transit Transportation Investment Fund.

(b) The fund shall be funded by:

(i) contributions deposited into the fund in accordance with Section 59-12-103;

(ii) appropriations into the account by the Legislature;

(iii) private contributions; and

(iv) donations or grants from public or private entities.

(c) (i) The fund shall earn interest.

(ii) All interest earned on fund money shall be deposited into the fund.

(d) Subject to Subsection (9)(e), the Legislature may appropriate money from the fund for public transit capital development of new capacity projects to be used as prioritized by the commission.

(e) (i) The Legislature may only appropriate money from the fund for a public transit capital development project or pedestrian or nonmotorized transportation project that provides connection to the public transit system if the public transit district or political subdivision provides funds of equal to or greater than 40% of the costs needed for the project.

(ii) A public transit district or political subdivision may use money derived from a loan granted pursuant to Title 72, Chapter 2, Part 2, State Infrastructure Bank Fund, to provide all or part of the 40% requirement described in Subsection (9)(e)(i) if:

(A) the loan is approved by the commission as required in Title 72, Chapter 2, Part 2, State Infrastructure Bank Fund; and

(B) the proposed capital project has been prioritized by the commission pursuant to Section 72-1-303.

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