

STATE FINANCE REVIEW COMMISSION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jeffrey D. Stenquist

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies provisions related to the State Finance Review Commission and bonding requirements.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ requires that any entity with bonding authority obtain the approval of the State Finance Review Commission before entering into certain concessionaire agreements; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63C-25-101, as enacted by Laws of Utah 2022, Chapter 207 and last amended by Coordination Clause, Laws of Utah 2022, Chapter 207

63C-25-202, as enacted by Laws of Utah 2022, Chapter 207

63N-13-302, as last amended by Laws of Utah 2022, Chapter 240

63N-13-306, as last amended by Laws of Utah 2022, Chapters 207, 240

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

Section 1. Section **63C-25-101** is amended to read:

63C-25-101. Definitions.

As used in this chapter:

(1) "Authority" means the same as that term is defined in Section **63B-1-303**.

(2) "Bond" means the same as that term is defined in Section **63B-1-101**.

(3) (a) "Bonding government entity" means the state or any entity that is authorized to issue bonds under any provision of state law.

(b) "Bonding government entity" includes:

(i) a bonding political subdivision; and

(ii) a public infrastructure district that is authorized to issue bonds either directly, or through the authority of a bonding political subdivision or other governmental entity.

~~[(3)]~~ (4) "Bonding political subdivision" means:

(a) the Utah Inland Port Authority, created in Section **11-58-201**;

(b) the Military Installation Development Authority, created in Section **63H-1-201**;

(c) the Point of the Mountain State Land Authority, created in Section **11-59-201**; or

(d) the Utah Lake Authority, created in Section **11-65-201**.

~~[(4)]~~ (5) "Commission" means the State Finance Review Commission created in Section **63C-25-201**.

~~[(5)]~~ (6) "Concessionaire" means a person who:

(a) operates, finances, maintains, or constructs a government facility under a contract with a bonding political subdivision; and

(b) is not a bonding ~~[political subdivision]~~ government entity.

(7) "Concessionaire contract" means a contract:

(a) between a bonding government entity and a concessionaire for the operation, finance, maintenance, or construction of a government facility;

(b) that authorizes the concessionaire to operate the government facility for a term of five years or longer, including any extension of the contract; and

(c) in which all or some of the annual source of payment to the concessionaire comes from state funds provided to the bonding government entity.

~~[(6)]~~ (8) "Creating entity" means the same as that term is defined in Section 17D-4-102.

~~[(7)]~~ (9) "Government facility" means infrastructure, improvements, or a building that:

(a) costs more than \$5,000,000 to construct; and

(b) has a useful life greater than five years.

~~[(8)]~~ (10) "Large public transit district" means the same as that term is defined in Section 17B-2a-802.

~~[(9)]~~ (11) "Loan entity" means the board, person, unit, or agency with legal responsibility for making a loan from a revolving loan fund.

~~[(10)]~~ (12) "Obligation" means the same as that term is defined in Section 63B-1-303.

~~[(11)]~~ (13) "Parameters resolution" means a resolution of a bonding ~~[political subdivision, or public infrastructure district created by a bonding political subdivision,]~~ government entity that sets forth for proposed bonds:

(a) the maximum:

(i) amount of bonds;

(ii) term; and

(iii) interest rate; and

(b) the expected security for the bonds.

~~[(12)]~~ (14) "Public infrastructure district" means a public infrastructure district created under Title 17D, Chapter 4, Public Infrastructure District Act.

~~[(13)] "Public-private partnership" means a contract:]~~

~~[(a) between a bonding political subdivision and a concessionaire for the operation, finance, maintenance, or construction of a government facility;]~~

~~[(b) that authorizes the concessionaire to operate the government facility for a term of five years or longer, including any extension of the contract; and]~~

~~[(c) in which all or some of the annual source of payment to the concessionaire comes~~

86 ~~from state funds provided to the bonding political subdivision.]~~

87 [(14)] (15) "Revolving loan fund" means:

88 (a) the Water Resources Conservation and Development Fund, created in Section

89 73-10-24;

90 (b) the Water Resources Construction Fund, created in Section 73-10-8;

91 (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

92 (d) the Clean Fuel Conversion Funds, created in [~~Title 19, Chapter 1, Part 4, Clean~~
93 ~~Fuels and Vehicle Technology Program Act]~~ Title 19, Chapter 1, Part 4, Clean Fuels and
94 Emission Reduction Technology Program Act;

95 (e) the Water Development Security Fund and its subaccounts, created in Section

96 73-10c-5;

97 (f) the Agriculture Resource Development Fund, created in Section 4-18-106;

98 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-105;

99 (h) the Permanent Community Impact Fund, created in Section 35A-8-303;

100 (i) the Petroleum Storage Tank Fund, created in Section 19-6-409;

101 (j) the School Building Revolving Account, created in Section 53F-9-206;

102 (k) the State Infrastructure Bank Fund, created in Section 72-2-202;

103 (l) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;

104 (m) the Navajo Revitalization Fund, created in Section 35A-8-1704;

105 (n) the Energy Efficiency Fund, created in Section 11-45-201;

106 (o) the Brownfields Fund, created in Section 19-8-120;

107 (p) the following enterprise revolving loan funds created in Section 63A-3-402:

108 (i) the inland port infrastructure revolving loan fund;

109 (ii) the point of the mountain infrastructure revolving loan fund; or

110 (iii) the military development infrastructure revolving loan fund; and

111 (q) any other revolving loan fund created in statute where the borrower from the
112 revolving loan fund is a public non-profit entity or political subdivision, including a fund listed
113 in Section 63A-3-205, from which a loan entity is authorized to make a loan.

114 ~~[(15)]~~ (16) (a) "State funds" means an appropriation by the Legislature identified as
115 coming from the General Fund or Education Fund.

116 (b) "State funds" does not include:

117 (i) a revolving loan fund; or

118 (ii) revenues received by a bonding political subdivision from:

119 (A) a tax levied by the bonding political subdivision;

120 (B) a fee assessed by the bonding political subdivision; or

121 (C) operation of the bonding political subdivision's government facility.

122 Section 2. Section **63C-25-202** is amended to read:

123 **63C-25-202. Powers and duties.**

124 (1) The commission shall annually review a report provided in accordance with Section
125 **63B-1-305** or **63B-1a-102**.

126 (2) (a) A loan entity other than a loan entity described in Subsection (2)(b) shall no
127 later than January 1 of each year submit information on each revolving loan fund from which
128 the loan entity made a loan in the previous fiscal year, including information identifying new
129 and ongoing loan recipients, the terms of each loan, loan repayment, and any other information
130 regarding a revolving loan fund requested by the commission.

131 (b) If a loan entity is:

132 (i) the Utah Inland Port Authority, the loan entity shall submit the information in
133 accordance with Section **11-58-106** and any other information regarding a revolving loan fund
134 requested by the commission;

135 (ii) the Point of the Mountain State Land Authority, the loan entity shall submit the
136 information in accordance with Section **11-59-104** and any other information regarding a
137 revolving loan fund requested by the commission; or

138 (iii) the Military Installation Development Authority, the loan entity shall submit the
139 information in accordance with Section **63H-1-104** and any other information regarding a
140 revolving loan fund requested by the commission.

141 (c) The commission may annually review and provide feedback for the following:

(i) each loan entity for compliance with state law authorizing and regulating the revolving loan fund, including, as applicable, Title 11, Chapter 14, Local Government Bonding Act;

(ii) each loan entity's revolving loan fund policies and practices, including policies and practices for approving and setting the terms of a loan; and

(iii) each borrower of funds from a revolving loan fund for accurate and timely reporting by the borrower to the appropriate debt repository.

(3) (a) The commission shall review and may approve a bond before a large public transit district may issue a bond.

(b) The commission may not approve issuance of a bond described in Subsection (3)(a) unless the execution and terms of the bond comply with state law.

(c) If, after review, the commission approves a bond described in Subsection (3)(a), the large public transit district:

(i) may not change before issuing the bond the terms of the bond that were reviewed by the commission if the change is outside the approved parameters and intended purposes; and

(ii) is under no obligation to issue the bond.

(d) A member of the commission who approves a bond under Subsection (3)(a) or reviews a parameters resolution under Subsection (4)(a) is not liable personally on the bond.

(e) The approval of a bond under Subsection (3)(a) or review under Subsection (4)(a) of a parameters resolution by the commission:

(i) is not an obligation of the state; and

(ii) is not an act that:

(A) lends the state's credit; or

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

(4) (a) The commission shall review and, at the commission's discretion, may make recommendations regarding a parameters resolution before:

(i) a bonding political subdivision may issue a bond; or

(ii) a public infrastructure district may issue a bond, if the creating entity of the public infrastructure district is a bonding political subdivision.

(b) The commission shall conduct the review under Subsection (4)(a) and forward any recommendations to the bonding political subdivision or public infrastructure district no later than 45 days after the day on which the commission receives the bonding political subdivision's or public infrastructure district's parameters resolution.

(c) Notwithstanding Subsection (4)(a), if the commission fails to review a parameters resolution or forward recommendations, if any, in the timeframe described in Subsection (4)(b), the bonding political subdivision or public infrastructure district, respectively, may proceed with the bond without review by the commission.

(d) After review by the commission under Subsection (4)(a), the bonding political subdivision or public infrastructure district:

(i) shall consider recommendations by the commission; and

(ii) may proceed with the bond but is under no obligation to issue the bond.

(5) The commission shall provide training and other information on debt management, lending and borrowing best practices, and compliance with state law to the authority, a bonding political subdivision, a large public transit district, and a loan entity.

(6) (a) ~~[If a public-private partnership contemplates payments from state funds, the commission shall review and may approve the public-private partnership before a bonding political subdivision may enter into the public-private partnership.]~~ Before a bonding government entity may enter into a concessionaire contract, the commission shall review and approve the concessionaire contract.

(b) If, after review, the commission approves the ~~[public-private partnership described in Subsection (6)(a)]~~ concessionaire contract, the bonding ~~[political subdivision]~~ government entity:

(i) may not change the terms of the ~~[public-private partnership]~~ concessionaire contract if the change is outside ~~[the]~~ of:

(A) any applicable approved parameters ~~[and]~~ of the concessionaire contract; or

(B) the intended purposes of the concessionaire contract; and
(ii) is under no obligation to enter into the ~~[public-private partnership]~~ concessionaire contract.

Section 3. Section **63N-13-302** is amended to read:

63N-13-302. Definitions.

As used in this part:

(1) "Bonding government entity" means the same as that term is defined in Section 63C-25-101.

(2) "Concessionaire contract" means the same as that term is defined in Section 63C-25-101.

(3) "Facilitator" means:

(a) the office, if the office chooses to perform itself the functions and responsibilities described in Section **63N-13-304**; or

(b) a person engaged by the office to perform the functions and responsibilities described in Section **63N-13-304**, if the office chooses to have those functions and responsibilities performed by a person other than the office.

~~[(2)]~~ (4) "Government entity" means:

(a) the state or any department, division, agency, or other instrumentality of the state;
or

(b) a political subdivision of the state.

~~[(3)]~~ (5) "Public-private partnership" means an arrangement or agreement between a government entity and one or more private persons to fund and provide for a public need through the development or operation of a public project in which the private person or persons share with the government entity the responsibility or risk of developing, owning, maintaining, financing, or operating the project.

Section 4. Section **63N-13-306** is amended to read:

63N-13-306. Limits on application of this part -- Concessionaire contract.

(1) Nothing in this part:

(a) requires a government entity to use the facilitator to explore the possibility of filling a public need through a public-private partnership; or

(b) limits the ability of a government entity to directly:

(i) solicit a public-private partnership; or

(ii) respond to a private person exploring an investment opportunity in a public project through a public-private partnership.

~~[(2)(a) As used in this Subsection (2):]~~

~~[(i) "Bonding political subdivision" means the same as that term is defined in Section 63C-25-101.]~~

~~[(ii) "Public-private partnership" means the same as that term is defined in Section 63C-25-101.]~~

~~[(b)]~~ (2) A facilitator shall inform a bonding ~~[political subdivision]~~ government entity that is contemplating entering into a ~~[public-private partnership]~~ concessionaire contract that the bonding ~~[political subdivision]~~ government entity may not enter into the ~~[public-private partnership]~~ concessionaire contract unless the bonding ~~[political subdivision]~~ government entity first receives approval from the State Finance Review Commission in accordance with Section 63C-25-202.

(3) A government entity anticipating the possibility of entering into a public-private partnership or a concessionaire contract is encouraged to consult with and take advantage of the expertise of the facilitator as the government entity determines:

(a) whether to enter into the public-private partnership or the concessionaire contract; and

(b) the best way to structure the public-private partnership or the concessionaire contract.