

March 19, 2014

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Revision of R590, Issuance of Revenue Bonds for Facilities Construction, Facilities Acquisition, or Equipment

Issue

Policy R590, *Issuance of Revenue Bonds for Facilities Construction, Facilities Acquisition, or Equipment* has recently been reviewed by the Office of the Commissioner and USHE institutional representatives; this review is a part of the continuing review of all Regental policies. A result of this review is the recommendation to clarify the requirements, provisions and guidelines for the issuance of revenue bonds for facilities construction, facilities acquisition, or equipment.

Background

The policy language dates back more than a decade. Updated language includes:

- The title was revised to be more complete as to what is covered by the policy.
- Reference 2.6 was added simply because it is an alternative method for long-term finance of facilities.
- Section R590.3, General Provisions was added to clarify which proposals require legislative authorization and those that don't.
- The addition of the General Provision section pushed the former R590.3, Policy down to R590.4.
- The reference to the Associate Commissioner for Finance and Facilities was changed to the Office of the Commissioner throughout the policy.
- The section pertaining to procedures for obtaining legislative authorization (existing policy section 3.3) was moved ahead of the section pertaining to procedures for issuing the bonds (existing section 3.2).
- Sections 3.3.4, 3.3.5, and 3.3.6 of the existing policy were eliminated since they deal with "issuance" of the bonds, not "legislative authorization."
- New section 4.3.1 was made to apply only to proposals not needing legislative authorization since that approval will already have been achieved for proposals requiring legislative authorization in new policy section 4.2.1.
- Regarding 4.7, there does not appear to be an historical precedent of including a summary of State of Utah General Obligation Bond debt associated with USHE capital development with the annual report to the Regents.

Policy Changes

The proposed amendment to R590 is in compliance with Utah state statutes: Utah Code §53B-21, Revenue Bonds, Utah Code §11-17, Utah Industrial Facilities and Development Act, and Utah Code §63G-6, Utah Procurement Code.

Commissioner's Recommendation

The Commissioner recommends that the Regents approve the revisions to policy R590, *Issuance of Revenue Bonds for Facilities Construction, Facilities Acquisition, or Equipment*, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/WRH/CRW
Attachment

R590, Issuance of Revenue Bonds for Facilities Construction, Facilities Acquisition, or Equipment¹

R590-1. Purpose: To provide policy and procedural guidelines for the issuance of revenue bonds within the USHE for ~~facilities~~ construction projects, facilities acquisition, or equipment purchases.

R590-2. References

- 2.1. Utah Code §53B-21 (Revenue Bonds)
- 2.2. Utah Code §11-17 (Utah Industrial Facilities and Development Act)
- 2.3. Utah Code §63G-6 (Utah Procurement Code)
- 2.4. Policy and Procedures R220, Delegation of Responsibility to the Presidents and Institutional Boards of Trustees
- 2.5. Policy and Procedures R710, Capital Facilities
- 2.6. Policy and Procedures R587, Contract or Lease-purchase Financing

R590-3. General Provisions: Except as provided by 3.1 and 3.2 below, the Utah State Board of Regents may not issue revenue bonds without prior approval from the Legislature.

3.1. Refunding of bonds previously approved by the Legislature are exempt from Legislative authorization if:

3.1.1. The bonds are issued to reduce debt service costs; and

3.1.2. The refunding bonds mature during the same time frame as the original obligation.

3.2. The Board may issue bonds, on behalf of the University of Utah and Utah State University, in an amount not to exceed \$10,000,000 in any one fiscal year on behalf of either institution without prior approval from the Legislature.

R590-~~34~~.Policy

34.1. Availability of ~~Associate Office of the~~ Commissioner ~~for Finance and Facilities~~: When requested by the institution, the ~~Associate~~ Office of the Commissioner ~~for Finance and Facilities~~ shall assist in the development of institutional revenue bonding proposals for ~~facilities~~ construction projects, facility acquisition, or equipment purchases. At the discretion of institution officials, institutions may proceed independently to develop revenue bonding proposals ~~for facilities construction or equipment purchases~~ provided the proposals are developed in accordance with Regent policies R220, R710 and applicable procedures contained in this policy.

¹ Adopted June 28, 1991, amended January 16, 2004.

34.32. Procedural Requirements for Institutions Obtaining Specific Legislative Authority Consistent with Utah Code Title 53B, Chapter 21 to Issue Revenue Bonds: Institutions obtaining specific legislative authority consistent with Utah Code §53B-21 to issue revenue bonds shall:

34.32.1. Obtain Board approval in concept of each ~~facility~~ construction project or facility acquisition for which bonding will be requested through the Finance and Facilities Committee of the Board based on documentation of the need for the project and its compatibility with and inclusion in the current institutional facilities master plan. This approval ~~must~~ may be sought and obtained prior to or simultaneously with approval to seek legislative authority to issue the bonds.

34.32.2. Obtain Board approval to seek legislative authority to issue revenue bonds for the construction project, facility acquisition, or equipment purchase through the Finance and Facilities Committee of the Board based on a description of the ~~project~~ proposal.

34.32.3. ~~Through the Commissioner's office, R~~request legislative authority, through the Office of the Commissioner, to issue the revenue bonds for the ~~construction project or equipment purchase~~ proposal.

~~**3.3.4.**—Obtain Board approval to seek revenue bond financing for the construction project or equipment purchase through the Finance and Facilities Committee of the Board based on an updated description of the project and an initial plan for debt servicing. When scheduling permits, approval to seek financing shall be obtained prior to the steps set forth in 3.3.5. When scheduling requirements are urgent, steps set forth in 3.3.5 may be initiated prior to obtaining Board approval to seek financing.~~

~~**3.3.5.**—Request appointment of bond counsel by the Attorney General, select an underwriter or underwriting team through a request for proposal process and provide copies of the request for bond counsel and the underwriter request for proposal to the Associate Commissioner for Finance and Facilities.~~

~~**3.3.6.**—Obtain a Board resolution through the Finance and Facilities Committee of the Board authorizing issuance of the bonds. The authorizing resolution shall be prepared by bond counsel and shall include all provisions necessary to complete the transaction and issue the bonds. The authorizing resolution shall include the parameters for principal amounts, terms, discounts and timing. Revised plans for debt service and up-to-date financial feasibility analysis shall be submitted to the Board with the proposed authorizing resolution. When possible, the authorizing resolutions, related bond documentation, and financial feasibility data shall be submitted to the Associate Commissioner for Finance and Facilities for review at least 15 days prior to Board consideration of the resolution.~~

34.23. Procedural Requirements for Institutions Issuing Bonds Pursuant to Utah Code Title 11, Chapter 17, Industrial Facilities and Development Act: Institutions issuing bonds pursuant to Utah Code §11-17, Utah Industrial Facilities and Development Act, shall:

34.2.3.1. Obtain Board approval in concept of each ~~facility~~ construction project or facility acquisition that is exempt from legislative authorization (see section R590.3, General Provisions) through the Finance and Facilities Committee of the Board based on documentation of the need for the project and its compatibility with and inclusion in the current institutional facilities master plan. This approval must be sought and obtained prior to or simultaneously with approval to seek financing.

34.2.3.2. Obtain Board approval through the Finance and Facilities Committee of the Board to seek revenue bond financing for ~~the construction project or equipment purchase~~ bonding proposals authorized by the Legislature or exempt from legislative authorization (see section R590.3., General Provisions) ~~through the Finance and Facilities Committee of the Board~~, providing a description of the project proposal and an initial plan for debt servicing. When scheduling permits, approval to seek financing shall be obtained prior to the steps set forth in 34.23.32. When scheduling requirements are urgent, steps set forth in 34.23.32. may be initiated prior to obtaining Board approval to seek financing.

34.23.3. Request, through the Office of the Commissioner, appointment of bond counsel by the Attorney General and select an underwriter or underwriting team through a request for proposal process. ~~and provide copies of the request for bond counsel and the underwriter request for proposal to the Associate Commissioner for Budget and Finance.~~

34.23.4. Obtain a Board resolution through the Finance and Facilities Committee authorizing issuance of the bonds. The authorizing resolution shall be prepared by bond counsel and shall include the provisions necessary to complete the transaction and issue the bonds. The authorizing resolution shall include the parameters for principal amounts, terms, discounts and timing. The institution shall submit to the Board current plans for debt service and up-to-date financial feasibility analysis with the proposed authorizing resolution. When possible, the authorizing resolutions, related bond documentation, and financial feasibility data shall be submitted to the Associate Office of the Commissioner ~~for Finance and Facilities~~ for review at least 15 days prior to Board consideration of the resolution.

34.4. Procurement of Financial Services: Institutional procurement of all financial services relating to bond issues shall be made in compliance with Utah Code §63G-6, Utah Procurement Code.

34.5. Responsibility of the Associate Office of the Commissioner ~~for Finance and Facilities~~ to Review Bond Documentation: Prior to Board consideration of any authorizing resolution the Associate Office of the Commissioner ~~for Finance and Facilities~~ shall review the applicable bond documentation. The Office of the Commissioner shall also evaluate up-to-date financial data, provisions for renewal and replacement, provisions for sinking fund reserve, parameters on principal amounts, terms, discounts and timing, and other issues relating to the financial feasibility of the proposed bond issue. The Associate Office of the Commissioner ~~shall report findings to the Commissioner and~~ shall be available to address any financial concerns the Board may have.

34.6. Associate Office of the Commissioner ~~for Finance and Facilities~~ to Seek Attorney's General Opinion: The Associate Office of the Commissioner ~~for Finance and Facilities~~ shall request an opinion from the Attorney General regarding the legality of the bond issue and related contracts and provisions.

34.7. Associate Office of the Commissioner ~~for Finance and Facilities~~ to Submit an Annual Report of Bond Debt. The Associate Office of the Commissioner ~~for Finance and Facilities~~ shall prepare and submit to the Board an annual report which summarizes institutional and system bonded indebtedness, relative to nationally recognized standards for financial strength, associated with institutional or system revenue bonds. ~~, and shall include a summary of State of Utah General Obligation Bond debt associated with USHE capital development.~~

R590, Issuance of Revenue Bonds for Facilities Construction, Facilities Acquisition, or Equipment¹

R590-1. Purpose: To provide policy and procedural guidelines for the issuance of revenue bonds within the USHE for construction projects, facilities acquisition, or equipment purchases.

R590-2. References

- 2.1. Utah Code §53B-21 (Revenue Bonds)
- 2.2. Utah Code §11-17 (Utah Industrial Facilities and Development Act)
- 2.3. Utah Code §63G-6 (Utah Procurement Code)
- 2.4. Policy and Procedures R220, Delegation of Responsibility to the Presidents and Institutional Boards of Trustees
- 2.5. Policy and Procedures R710, Capital Facilities
- 2.6. Policy and Procedures R587, Contract or Lease-purchase Financing

R590.3. General Provisions: Except as provided by 3.1 and 3.2 below, the Utah State Board of Regents may not issue revenue bonds without prior approval from the Legislature.

3.1. Refunding of bonds previously approved by the Legislature are exempt from Legislative authorization if:

- 3.1.1. The bonds are issued to reduce debt service costs; and
- 3.1.2. The refunding bonds mature during the same time frame as the original obligation.

3.2. The Board may issue bonds, on behalf of the University of Utah and Utah State University, in an amount not to exceed \$10,000,000 in any one fiscal year on behalf of either institution without prior approval from the Legislature.

R590-4. Policy

4.1. **Availability of Office of the Commissioner:** When requested by the institution, the Office of the Commissioner shall assist in the development of institutional revenue bonding proposals for construction projects, facility acquisition, or equipment purchases. At the discretion of institution officials, institutions may proceed independently to develop revenue bonding proposals provided the proposals are developed in accordance with Regent policies R220, R710 and applicable procedures contained in this policy.

¹ Adopted June 28, 1991, amended January 16, 2004.

4.2. Procedural Requirements for Institutions Obtaining Specific Legislative Authority Consistent with Utah Code Title 53B, Chapter 21 to Issue Revenue Bonds: Institutions obtaining specific legislative authority consistent with Utah Code §53B-21 to issue revenue bonds shall:

4.2.1. Obtain Board approval in concept of each construction project or facility acquisition for which bonding will be requested through the Finance and Facilities Committee of the Board based on documentation of the need for the project and its compatibility with and inclusion in the current institutional facilities master plan. This approval may be sought and obtained prior to or simultaneously with approval to seek legislative authority to issue the bonds.

4.2.2. Obtain Board approval to seek legislative authority to issue revenue bonds for the construction project, facility acquisition, or equipment purchase through the Finance and Facilities Committee of the Board based on a description of the proposal.

4.2.3. Request legislative authority, through the Office of the Commissioner, to issue the revenue bonds for the proposal.

4.3. Procedural Requirements for Institutions Issuing Bonds Pursuant to Utah Code Title 11, Chapter 17, Industrial Facilities and Development Act: Institutions issuing bonds pursuant to Utah Code §11-17, Utah Industrial Facilities and Development Act, shall:

4.3.1. Obtain Board approval in concept of each construction project or facility acquisition that is exempt from legislative authorization (see section R590.3, General Provisions) through the Finance and Facilities Committee of the Board based on documentation of the need for the project and its compatibility with and inclusion in the current institutional facilities master plan. This approval must be sought and obtained prior to or simultaneously with approval to seek financing.

4.3.2. Obtain Board approval through the Finance and Facilities Committee of the Board to seek revenue bond financing for bonding proposals authorized by the Legislature or exempt from legislative authorization (see section R590.3., General Provisions), providing a description of the proposal and an initial plan for debt servicing. When scheduling permits, approval to seek financing shall be obtained prior to the steps set forth in 4.3.2. When scheduling requirements are urgent, steps set forth in 4.3.2. may be initiated prior to obtaining Board approval to seek financing.

4.3.3. Request, through the Office of the Commissioner, appointment of bond counsel by the Attorney General and select an underwriter or underwriting team through a request for proposal process.

4.3.4. Obtain a Board resolution through the Finance and Facilities Committee authorizing issuance of the bonds. The authorizing resolution shall be prepared by bond counsel and shall include the provisions necessary to complete the transaction and issue the bonds. The authorizing resolution shall include the parameters for principal amounts, terms, discounts and timing. The institution shall submit to the Board current plans for debt service and up-to-date financial feasibility analysis with the proposed authorizing resolution. When possible, the authorizing resolutions, related bond documentation, and financial feasibility data shall be submitted to the Office of the Commissioner for review at least 15 days prior to Board consideration of the resolution.

4.4. Procurement of Financial Services: Institutional procurement of all financial services relating to bond issues shall be made in compliance with Utah Code §63G-6, Utah Procurement Code.

4.5. Responsibility of the Office of the Commissioner to Review Bond Documentation: Prior to Board consideration of any authorizing resolution the Office of the Commissioner shall review the applicable bond documentation. The Office of the Commissioner shall also evaluate up-to-date financial data, provisions for renewal and replacement, provisions for sinking fund reserve, parameters on principal amounts, terms, discounts and timing, and other issues relating to the financial feasibility of the proposed bond issue. The Office of the Commissioner shall be available to address any financial concerns the Board may have.

4.6. Office of the Commissioner to Seek Attorney's General Opinion: The Office of the Commissioner shall request an opinion from the Attorney General regarding the legality of the bond issue and related contracts and provisions.

4.7. Office of the Commissioner to Submit an Annual Report of Bond Debt. The Office of the Commissioner shall prepare and submit to the Board an annual report which summarizes institutional and system bonded indebtedness, relative to nationally recognized standards for financial strength, associated with institutional or system revenue bonds.