

March 19, 2014

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: Revision of R588, Delegation of Debt Policy to Boards of Trustees

Issue

Policy R588, *Delegation of Debt Policy to Boards of Trustees* has recently been reviewed by the Office of the Commissioner and USHE institutional representatives; this reexamination a part of the continuing review of all Regental policies. Suggested modifications to this policy focus on providing a framework by which decisions can be made concerning the use and management of debt and providing guidelines for USHE institutions to use in the establishment of debt policies.

Background

The policy was first implemented in 2007, at which time the Regents determined to delegate specific policy making ability to institutions choosing to implement a debt policy. Recommended updates now include:

- Clarifies the Purpose.
- Expands references to include the two major Regents' policies on long-term debt that relate specifically to statutory authorization.
- Moves section R588.4 to R588.3 and retitled it "General Policy."
- Adds a new section, R588.4, Overview of Financing Structures to provide information about the kinds of debt instruments that might be considered in formulating institutional policies.
- Moves section 588.3, Definitions to 588.5. and retitles it to be General Considerations. It was erroneously titled "Definitions."
- Removes reference to "general obligation" debt since it is the sole purview of the State of Utah, not the Regents or USHE institutions.

Policy Changes

The proposed amendment to R588 is in compliance with Utah state statutes: Utah Code §53B-1-102, State System of Higher Education and Utah Code §53B-1-103, Establishment of State Board of Regents – Powers and Authority.

Commissioner's Recommendation

The Commissioner recommends that the Regents approve the revisions to policy R588, *Delegation of Debt Policy to Boards of Trustees*, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/WRH/CRW
Attachment

R588, Delegation of Debt Policy to Boards of Trustees¹

R588-1. Purpose: To authorize ~~an institution~~ USHE institutions to establish ~~a debt policy~~ policies approved by ~~its~~ their Boards of Trustees to provide a framework by which decisions are made concerning the use and management of debt and to provide guidelines for the establishment of such policies.

R588-2. References

- 2.1. 53B-1-102, Utah Code Annotated 1953 (State System of Higher Education)
- 2.2. 53B-1-103, Utah Code Annotated 1953 (Establishment of State Board of Regents – Powers and authority)
- 2.3. R590, Issuance of Revenue Bonds for Facilities Construction and Equipment
- 2.4. R587, Contract or Lease-purchase Financing

R588.43. General Policy ~~An institution within the Utah System Of Higher Education may~~ USHE institutions are authorized to establish ~~its~~ their own institutional debt policy policies ~~in consultation with the Commissioner's Office and, as~~ approved by ~~its~~ their Boards of Trustees, to meet the individual needs and objectives of the institutions ~~in regards to debt~~ regarding the use and management of debt. Such policies must adhere to the specific requirements contained herein and should utilize the general considerations ~~contained herein as guidelines.~~

R588-4. Overview of Financing Structures

- 4.1. Revenue Bonds – Revenue Bonds are long-term debt instruments that are repaid from an identified institutional revenue source. Upon recommendation by the Boards of Trustees, these bonds must be approved by the Utah State Board of Regents and authorized by the Utah State Legislature (see Board of Regents Policy R590, Issuance of Revenue Bonds for Facilities Construction and Equipment).
- 4.2. Leasehold Revenue Bonds – Financing of capital assets through the sale of bonds secured by lease payments ("lease revenue bonds"). This method requires that the property and/or equipment be purchased by a not-for-profit corporation or governmental agency. The not-for-profit corporation or governmental agency issues bonds secured by the lease and serves as lessor of the property. This form of financing is used by the State Building Ownership Authority (SBOA) – see Utah Code §63B-1-301 to 321.
- 4.3. Lease-purchase Financing of Facilities – A long-term financing method for construction or acquisition of buildings that amortizes the cost of the asset over a specified time period, at the conclusion of which the asset vests in the lessee. This is an alternative to revenue bond funding that requires Utah State Board of Regents approval upon the recommendation of the institutional Boards of Trustees (see Board of Regents Policy R587, Contract or Lease-purchase Financing).
- 4.4. Certificates of Participation - A lease-purchase financing arrangement through the public sale of certificates of participation (COPs) where the certificate holders own a pro rata share in a specific pledged revenue stream (usually lease payments by the issuer) and essentially become the lessors (see section 4.3 above).

¹ Adopted January 19, 2007, amended March 9, 2007.

4.5. Energy Service Agreement – A contractual agreement entered into whereby the institution implements energy efficiency measures using the stream of savings in utility costs resulting from implementation of the energy efficiency measures as the funding source for repayment. These arrangements are generally considered to be for facilities and are subject to the approval of the Utah State Board of Regents (see section 4.3 above).

4.6. Capital or Finance Lease Purchase of Equipment – A lease agreement in which the lessor agrees to transfer ownership rights of the asset to the lessee after the completion of the lease period

4.7. Operating Lease of Equipment – A contract that allows for the use of an asset, but does not convey rights of ownership unless a purchase option is available and exercised.

4.8. Other – Other debt instruments, such as off-balance sheet and third party debt may be considered in financing capital construction, renovation, or purchase of tangible assets (equipment) and intangible assets (computer software).

R588-5. General Considerations

~~3.1.5.1.~~ A debt policy ~~may be helpful in forming forms~~ the foundation for a well-managed debt program. ~~A debt policy can~~ by establishing parameters for issuing debt and managing the debt portfolio, ~~and by as well as~~ providing appropriate guidance to decision-makers, and identifying key objectives for institutional staff to implement. ~~If developed at the institutional level, a~~ Institutional debt ~~policy~~ policies should demonstrate a commitment to the institution's long-range financial plans, recognize a long-term commitment to full and timely repayment of all debt, and be compatible with the institution's goals for capital programs and budgets.

~~3.2.5.2.~~ Institutional debt policies should give consideration to:

~~3.2.1.5.2.1.~~ The purposes for which debt may be issued;

~~3.2.2.5.2.2.~~ ~~Legal d~~Debt limitations, ~~if any~~;

~~3.2.3.5.2.3.~~ Types of debt permitted to be issued;

~~3.2.4.5.2.4.~~ Criteria for issuance of short-term and long-term debt, ~~general obligation and~~ revenue debt, fixed and variable rate debt, lease-backed debt, tax-exempt and taxable debt, and special obligation debt;

~~3.2.5.5.2.5.~~ Credit objectives, such as maintenance of specific credit ratings or adherence to benchmark debt ratios;

~~3.2.6.5.2.6.~~ Authorized methods of sale, such as competitive sale, negotiated sale, and private placement;

~~3.2.7.5.2.7.~~ Method of selecting and use of outside finance professionals; ~~and~~

~~3.2.8.5.2.8.~~ Refunding of debt; and

5.2.9 Internal controls.

R588, Delegation of Debt Policy to Boards of Trustees¹

R588-1. Purpose: To authorize USHE institutions to establish debt policies approved by their Boards of Trustees to provide a framework by which decisions are made concerning the use and management of debt and to provide guidelines for the establishment of such policies.

R588-2. References

- 2.1. 53B-1-102, Utah Code Annotated 1953 (State System of Higher Education)
- 2.2. 53B-1-103, Utah Code Annotated 1953 (Establishment of State Board of Regents – Powers and authority)
- 2.3. R590, Issuance of Revenue Bonds for Facilities Construction and Equipment
- 2.4. R587, Contract or Lease-purchase Financing

R588.3. General Policy USHE institutions are authorized to establish their own institutional debt policies as approved by their Boards of Trustees, to meet the individual needs and objectives of the institutions regarding the use and management of debt. Such policies must adhere to the specific requirements contained herein and should utilize the general considerations.

R588-4. Overview of Financing Structures

- 4.1. Revenue Bonds – Revenue Bonds are long-term debt instruments that are repaid from an identified institutional revenue source. Upon recommendation by the Boards of Trustees, these bonds must be approved by the Utah State Board of Regents and authorized by the Utah State Legislature (see Board of Regents Policy R590, Issuance of Revenue Bonds for Facilities Construction and Equipment).
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- 4.3. Lease-purchase Financing of Facilities – A long-term financing method for construction or acquisition of buildings that amortizes the cost of the asset over a specified time period, at the conclusion of which the asset vests in the lessee. This is an alternative to revenue bond funding that requires Utah State Board of Regents approval upon the recommendation of the institutional Boards of Trustees (see Board of Regents Policy R587, Contract or Lease-purchase Financing).
- 4.4. Certificates of Participation - A lease-purchase financing arrangement through the public sale of certificates of participation (COPs) where the certificate holders own a pro rata share in a specific pledged revenue stream (usually lease payments by the issuer) and essentially become the lessors (see section 4.3 above).
- 4.5. Energy Service Agreement – A contractual agreement entered into whereby the institution implements energy efficiency measures using the stream of savings in utility costs resulting from implementation of the energy efficiency measures as the funding source for repayment. These

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arrangements are generally considered to be for facilities and are subject to the approval of the Utah State Board of Regents (see section 4.3 above).

4.6. Capital or Finance Lease Purchase of Equipment – A lease agreement in which the lessor agrees to transfer ownership rights of the asset to the lessee after the completion of the lease period

4.7. Operating Lease of Equipment – A contract that allows for the use of an asset, but does not convey rights of ownership unless a purchase option is available and exercised.

4.8. Other – Other debt instruments, such as off-balance sheet and third party debt may be considered in financing capital construction, renovation, or purchase of tangible assets (equipment) and intangible assets (computer software).

R588-5. General Considerations

5.1. A debt policy forms the foundation for a well-managed debt program by establishing parameters for issuing debt and managing the debt portfolio, as well as providing appropriate guidance to decision-makers, and identifying key objectives for institutional staff to implement. Institutional debt policies should demonstrate a commitment to the institution's long-range financial plans, recognize a long-term commitment to full and timely repayment of all debt, and be compatible with the institution's goals for capital programs and budgets.

5.2. Institutional debt policies should give consideration to:

5.2.1. The purposes for which debt may be issued;

5.2.2. Debt limitations;

5.2.3. Types of debt permitted to be issued;

5.2.4. Criteria for issuance of short-term and long-term debt, revenue debt, fixed and variable rate debt, lease-backed debt, tax-exempt and taxable debt, and special obligation debt;

5.2.5. Credit objectives, such as maintenance of specific credit ratings or adherence to benchmark debt ratios;

5.2.6. Authorized methods of sale, such as competitive sale, negotiated sale, and private placement;

5.2.7. Method of selecting and use of outside finance professionals;

5.2.8. Refunding of debt; and

5.2.9. Internal controls.