

May 6, 2015

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

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

Issue

When the status of the SEC Municipalities Continuing Disclosure Cooperation (MCDC) Initiative was presented to the Regents at the January 23, 2015 Board Meeting there were two remaining issues to be resolved: 1) adoption of Regents' policies and procedures regarding continuing disclosure obligations, and 2) implementation of third-party continuing disclosure reporting.

Background

Policies and Procedures Regarding Continuing Disclosure Obligations – While a thorough review and analysis of compliance with these continuing disclosure requirements found no failures that were deemed to be material, it is noteworthy that if and when the SEC finds an issuer to be in noncompliance, one of the primary requirements is the establishment of policies and procedures and compliance training. The attached revision to Board Policy R590, *Issuance of Revenue Bonds for Facilities Construction, Facilities Acquisition, or Equipment* provides guidelines for the development and adoption of policies and procedures at each USHE institution.

These revisions have the support of institutional representatives with whom they have been shared for review and feedback.

Significant revisions to the policy include:

- Section 4.8. has been added detailing institutional guidelines for continuing disclosure reporting in accordance with the SEC Rule 15c2-12;
- Section 4.8.1. requires institutions to develop policies and procedures to assure compliance with continuing disclosure requirements;
- Section 4.8.2. requires institutions to train officers and employees responsible for preparing the disclosure filings; and
- Section 4.8.3. requires institutions to retain third-party dissemination agents to oversee the disclosure filing process.

Third Party Continuing Disclosure Reporting – As highlighted above, one of the elements of the proposed policy revision is the requirement that future continuing disclosure required by *SEC Rule 15c2-12: Continuing Disclosure* be done by third party “dissemination agents.” In anticipation of passage of these revisions, OCHE worked to facilitate implementation of this requirement by identifying three qualified vendors from which the institutions could choose, two of which are currently being used for this purpose by USHE institutions. The three vendors are:

- Zions Bank Public Finance – Zions Bank is a well-known entity in Utah that has been involved with numerous OCHE institutions in a variety of ways over the years. They are currently providing continuing disclosure filing for Weber State University and Dixie State University.
- DAC – DAC is a national firm headquartered in Florida that has been providing post issuance compliance services for many years. The University of Utah is currently under contract with them for its filings.
- AVANT Strategic Partners – AVANT is a consulting firm that is affiliated with Ballard Spahr LLP (49% ownership stake) that offers a broad range of consulting services that includes post-issuance compliance.

Relevant cost and other information pertaining to the proposals from these providers was sent to the institutions for their review and selection. The University of Utah has opted to continue their agreement with DAC and Utah Valley University has selected AVANT. The remaining institutions all have chosen Zions Bank Public Finance.

Commissioner's Recommendation

The Commissioner recommends the Regents approve the proposed policy revisions to R590, *Issuance of Revenue Bonds for Facilities Construction, Facilities Acquisition, or Equipment*, effective immediately. Copies of the institutional policies and procedures, once adopted, are to be filed with the Commissioner's office.

David L. Buhler
Commissioner of Higher Education

DLB/GLS/WRH
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 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 and March 28, 2014.

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.

4.8. Continuing Disclosure Reporting Compliance: The following guidelines are provided for continuing disclosure reporting in accordance with the requirement of the Securities and Exchange Commission (SEC) Rule 15c2-12: Continuing Disclosure.

4.8.1. Policies and Procedures: USHE institutions shall develop and adopt policies and procedures that are designed to assure compliance in all material respects with continuing disclosure requirements including avoidance of misstatements that could be material to investors within the meaning of the general antifraud provisions of the federal securities law.

4.8.2. Training: USHE institutions shall use their best efforts to ensure that officers and employees responsible for preparing the information required for continuing disclosure filings are properly trained for the responsibility including:

4.8.2.1. Adoption of procedures to be followed in collection and disbursement of the required information;

4.8.2.2. Ensuring access to the necessary records; and

4.8.2.3. Ensuring that such persons have reviewed and understand the relevant procedures.

4.8.3. Third-party Dissemination Agents: USHE institutions shall engage independent dissemination agents to oversee the process of identifying required information, collection of specified materials, and filing the continuing disclosure reports on or before the required deadlines.