

July 6, 2016

MEMORANDUM

TO: State Board of Regents

FROM: David L. Buhler

SUBJECT: USHE – Revision of Policy R590, *Issuance of Bonds for Colleges and Universities*

Issue

Policy R590 describes the process for issuing bonds by the Board of Regents on behalf of USHE institutions. The proposed modifications clarify procedural requirements and better align existing practices with statutory authority.

Background

Utah code delegates authority to the Board of Regents to issue bonds on behalf of institutions who repay the debt. Legislative authorization is necessary prior to the issuance of these bonds except in two specific instances that Regent policy R590 was updated to clarify: refunding bonds and industrial facility and development bonds. Other significant changes to the policy include:

- Reorganization of policy provisions to clarify responsibilities of the Office of the Commissioner and of the institutions related to the issuance of bonds.
- Greater detail regarding the requirements for institutions to issue revenue bonds and refunding bonds. Details include how to seek Board and legislative approval, the appointment of bond counsel, petitions for approving resolutions, and reporting results to the Board.
- A new provision allowing institutions more flexibility to issue refunding bonds by giving institutions the ability to request authority to issue bonds at an unspecified future date contingent on favorable interest rates and subject to certain conditions.

Commissioner's Recommendation

The Commissioner recommends that the Regents approve R590, *Issuance of Bonds for Colleges and Universities* as amended, effective immediately.

David L. Buhler
Commissioner of Higher Education

DLB/KLH/RPA
Attachment



R590, Issuance of Revenue Bonds for ~~Facilities Construction, Facilities Acquisition, or Equipment~~ Colleges and Universities¹

R590-1. Purpose: To provide policy and procedural guidelines for the issuance of revenue bonds for colleges and universities within the USHE Utah System of Higher Education (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)~~
- 2.3. Utah Code §11-27 (Utah Refunding Bond Act 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~~ Legislative Approval Required for Bond Issuance: The Board of Regents shall not issue revenue bonds without prior legislative approval ~~E~~ except as provided by sections 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~~ The Board may refund previously issued bonds without legislative authorization if:

~~3.1.1. The~~ 3.1.1. The bonds are issued to reduce debt service costs or for an objective that benefits the institution. ~~and~~

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

3.2. The Board may issue Utah Industrial Facilities and Development 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 legislative approval ~~from the Legislature~~ if the amount does not exceed \$10,000,000 in any one fiscal year, except refunding bonds for savings and with a maturity within the same time frame as the original bonds.

R590-4. ~~Policy~~ Responsibilities of the Office of the Commissioner:

¹ Adopted June 28, 1991, amended January 16, 2004, March 28, 2014 ~~and~~ May 15, 2015, and July 15, 2016.

4.1. Availability of Office of the Commissioner: ~~When requested by the institution~~ At the institution's request, the Office of the Commissioner shall assist in ~~the development of~~ developing 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.~~

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.~~

4.2 Review Bond Documentation: Prior to the Board considering any authorizing resolution, the Office of the Commissioner shall review the applicable bond documentation, up-to-date financial data for the institution and the revenues pledged to secure the bonds; the expected bond structure, including the structuring of any reserves; the parameters for maximum principal amounts, interest rates, terms of maturity and discounts from par; the anticipated timing for the issuance of the bonds and other materials requested by the Office of the Commissioner relating to the financial feasibility of the proposed bond issue.

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.~~

4.3. **Seek Attorney's General Opinion:** The Office of the Commissioner shall request from the Attorney General's office a legal review of the bond issue and related contracts.

~~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.~~

4.4. **Engagement of Bond and Disclosure Counsel:** The Office of the Commissioner shall request the Attorney General to procure bond counsel and disclosure counsel services.

~~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.~~

4.5. **Submit an Annual Report of Outstanding Bond Indebtedness.** The Office of the Commissioner shall prepare and submit to the Board an annual report of institutional and system bonded indebtedness relative to nationally recognized standards for financial strength.

~~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.~~

R590-5. Responsibilities of USHE Institutions:

5.1. Procurement of Financial Services: USHE institutions shall independently engage municipal advisors, trustees, underwriters, and dissemination agents relative to revenue bonds issuance.

5.2. Providing Bond Documentation: Prior to the Board reviewing a bond proposal, USHE institutions shall provide the Office of the Commissioner current data and information attesting to the financial feasibility of the proposed bond issue.

5.3. Continuing Disclosure Reporting Policies: USHE institutions shall establish policies and procedures that assure compliance with continuing disclosure requirements of the Securities and Exchange Commission (SEC) Rule 15c2-12.

5.3.1. Third-party Dissemination Agents: USHE institutions shall engage independent dissemination agents to verify information required under an institution's Continuing Disclosure Agreement, notify an institution on a timely basis of any missing information, collect and organize such specified data and information, generate the continuing disclosure reports and submit the report to EMMA on or before the required deadline.

5.4. Continuing Disclosure Training: USHE institutions shall ensure that officers and employees responsible for preparing the information required for continuing disclosure filings are properly trained.

5.5. Maintaining Tax Exempt Status: USHE institutions shall ensure that adequate policies, procedures, controls, and employee training are in place to preserve the tax-exempt status of Board issued revenue bonds.

R590-6. Requirements for Institutions to Issue Revenue Bonds: Consistent with Utah Code §53B-21:

6.1. Board Approval: Institutions shall obtain Board approval for each construction project or facility acquisition for which bonding will be requested. In seeking Board approval institutions shall:

6.1.1 Document the institution's need for project and its compatibility with and inclusion in the institution's current facilities master plan.

6.1.2. Provide financial analyses documenting the feasibility and sufficiency of revenue streams necessary to support the institution's currently outstanding indebtedness, the proposed revenue bonds, and demonstrating the institution's compliance with its additional bonds test including adherence with times coverage and rate covenants, if any.

6.1.3. Request Board approval to pursue legislative authorization.

6.2. Legislative Approval: After receiving preliminary Board approval, institutions shall obtain legislative authorization through an authorizing bill or resolution.

6.3. Appointment of Bond Counsel: After receiving legislative authorization, institutions shall request the Office of the Commissioner to engage bond counsel through the Attorney General.

6.4. Subsequent Board Approval through Resolution: After the appointment of bond counsel, institutions shall petition the Board for an approving resolution authorizing the issuance and sale of revenue bonds. The approving resolution shall:

6.4.1 Be prepared by bond counsel and include the provisions necessary to complete the transaction and issue the bonds.

6.4.2 Include the parameters for principal amounts, maturity date, discounts and interest rates.

6.4.3 Be submitted to the Office of the Commissioner for review prior to the Board's meeting. When practicable, institutions shall submit the proposed approving resolution 15 days prior to the meeting but no later than 7 days.

6.5 Issuing the Bonds: After the Board has authorized the institution to issue the bonds, the institution shall coordinate and issue the bonds with the assistance of an Independent registered municipal advisor and underwriter or team of underwriters employed to market and sell the proposed bonds. The Board chair, Board vice-chair or Finance and Facilities Committee chair shall formally participate in the sale of the bonds and affirmatively authorize, either in person or via conference call, the final terms and conditions for the sale of bonds consistent with the approving resolutions.

6.6. Reporting Results to the Board: The Office of the Commissioner shall report the results of the final bond pricing to the Board during its next scheduled meeting, including a comparison between the Board's previously approved parameters and the actual results of the bond pricing.

R590-7. Requirements for Institutions to Issue Refunding Revenue Bonds: Consistent with Utah Code §53B-21 and §11-27, legislative authorization is not required for bonds that refund prior issued revenue bonds. Institutions shall:

7.1. Appointment of Bond Counsel: Institutions shall request the Office of the Commissioner to obtain bond counsel through the Attorney General.

7.2. Board Approval through Resolution: After the appointment of bond counsel, institutions shall submit a proposed approving resolution for Board approval, authorizing the issuance and sale of revenue bonds refunding a prior issuance. The approving resolution shall:

7.2.1 Be prepared by bond counsel and include the provisions necessary to complete the transaction and issue the bonds.

7.2.2 Include the parameters for principal maturity date, discounts and interest rates.

7.2.3 Be submitted to the Office of the Commissioner for review prior to the Board's meeting. When practicable, institutions shall submit the proposed approving resolution 15 days prior to the meeting but no later than 7 days.

7.2.4 May request authority to issue bonds at an unspecified future date contingent on favorable interest rates if the approving resolution limits the maximum amount of principal that may be refunded, establishes an expiration date on the authorization not to exceed 18 months from the date of approval, and sets a minimum net present value savings that will be achieved.

7.3 Issuing the Bonds: After the Board has authorized the institution to issue the bonds, the institution shall coordinate and issue the bonds with the assistance of an independent registered municipal advisor and underwriter or team of underwriters hired to market and sell the proposed bonds. The Board Chair, Board vice-chair, or Finance and Facilities Committee chair shall formally participate in the sale of the bonds and affirmatively authorize, either in person or via conference call, the final terms and conditions for the sale of bonds consistent with the approving resolutions.

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R590-8. Requirements for Institutions Issuing Industrial Facilities and Development Revenue Bonds: Institutions issuing bonds pursuant to Utah Code §11-17, Utah Industrial Facilities and Development Act, shall follow the procedures established R590-6 except that the University of Utah and Utah State University does not need legislative approval for issuances under \$10 million per calendar year or refunding transactions.



R590, Issuance of Bonds for Colleges and Universities¹

R590-1. Purpose: To provide policy and procedural guidelines for the issuance of revenue bonds for colleges and universities within the Utah System of Higher Education (USHE).

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 §11-27 (Utah Refunding Bond Act 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

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- 3.1. The Board may refund previously issued bonds without legislative authorization if the bonds are issued to reduce debt service costs or for an objective that benefits the institution.
- 3.2. The Board may issue Utah Industrial Facilities and Development bonds, on behalf of the University of Utah and Utah State University without prior legislative approval if the amount does not exceed \$10,000,000 in any one fiscal year, except refunding bonds for savings and with a maturity within the same time frame as the original bonds.

R590-4. Responsibilities of the Office of the Commissioner:

- 4.1. **Availability of Office of the Commissioner:** At the institution's request, the Office of the Commissioner shall assist in-developing institutional revenue bonding proposals.
- 4.2. **Review Bond Documentation:** Prior to the Board considering any authorizing resolution, the Office of the Commissioner shall review the applicable bond documentation, up-to-date financial data for the institution and the revenues pledged to secure the bonds; the expected bond structure, including the structuring of any reserves; the parameters for maximum principal amounts, interest rates, terms of maturity and discounts from par; the anticipated timing for the issuance of the bonds and other materials requested by the Office of the Commissioner relating to the financial feasibility of the proposed bond issue.

¹ Adopted June 28, 1991, amended January 16, 2004, March 28, 2014, May 15, 2015 and July 15, 2016.

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- 4.4. **Engagement of Bond and Disclosure Counsel:** The Office of the Commissioner shall request the Attorney General to procure bond counsel and disclosure counsel services.
- 4.5. **Submit an Annual Report of Outstanding Bond Indebtedness.** The Office of the Commissioner shall prepare and submit to the Board an annual report of institutional and system bonded indebtedness relative to nationally recognized standards for financial strength.

R590-5. Responsibilities of USHE Institutions:

- 5.1. **Procurement of Financial Services:** USHE institutions shall independently engage municipal advisors, trustees, underwriters, and dissemination agents relative to revenue bonds issuance.
- 5.2. **Providing Bond Documentation:** Prior to the Board reviewing a bond proposal, USHE institutions shall provide the Office of the Commissioner current data and information attesting to the financial feasibility of the proposed bond issue.
- 5.3. **Continuing Disclosure Reporting Policies:** USHE institutions shall establish policies and procedures that assure compliance with continuing disclosure requirements of the Securities and Exchange Commission (SEC) Rule 15c2-12.
 - 5.3.1. **Third-party Dissemination Agents:** USHE institutions shall engage independent dissemination agents to verify information required under an institution's Continuing Disclosure Agreement, notify an institution on a timely basis of any missing information, collect and organize such specified data and information, generate the continuing disclosure reports and submit the report to EMMA on or before the required deadline.
- 5.4. **Continuing Disclosure Training:** USHE institutions shall ensure that officers and employees responsible for preparing the information required for continuing disclosure filings are properly trained.
- 5.5. **Maintaining Tax Exempt Status:** USHE institutions shall ensure that adequate policies, procedures, controls, and employee training are in place to preserve the tax-exempt status of Board issued revenue bonds.

R590-6. Requirements for Institutions to Issue Revenue Bonds: Consistent with Utah Code §53B-21:

- 6.1. **Board Approval:** Institutions shall obtain Board approval for each construction project or facility acquisition for which bonding will be requested. In seeking Board approval institutions shall:
 - 6.1.1. Document the institution's need for project and its compatibility with and inclusion in the institution's current facilities master plan.
 - 6.1.2. Provide financial analyses documenting the feasibility and sufficiency of revenue streams necessary to support the institution's currently outstanding indebtedness, the proposed revenue bonds, and demonstrating the institution's compliance with its additional bonds test including adherence with times coverage and rate covenants, if any.

6.1.3. Request Board approval to pursue legislative authorization.

6.2. **Legislative Approval:** After receiving preliminary Board approval, institutions shall obtain legislative authorization through an authorizing bill or resolution.

6.3. **Appointment of Bond Counsel:** After receiving legislative authorization, institutions shall request the Office of the Commissioner to engage bond counsel through the Attorney General.

6.4. **Subsequent Board Approval through Resolution:** After the appointment of bond counsel, institutions shall petition the Board for an approving resolution authorizing the issuance and sale of revenue bonds. The approving resolution shall:

6.4.1 Be prepared by bond counsel and include the provisions necessary to complete the transaction and issue the bonds.

6.4.2 Include the parameters for principal amounts, maturity date, discounts and interest rates.

6.4.3 Be submitted to the Office of the Commissioner for review prior to the Board's meeting. When practicable, institutions shall submit the proposed approving resolution 15 days prior to the meeting but no later than 7 days.

6.5 **Issuing the Bonds:** After the Board has authorized the institution to issue the bonds, the institution shall coordinate and issue the bonds with the assistance of an Independent registered municipal advisor and underwriter or team of underwriters employed to market and sell the proposed bonds. The Board chair, Board vice-chair or Finance and Facilities Committee chair shall formally participate in the sale of the bonds and affirmatively authorize, either in person or via conference call, the final terms and conditions for the sale of bonds consistent with the approving resolutions.

6.6. **Reporting Results to the Board:** The Office of the Commissioner shall report the results of the final bond pricing to the Board during its next scheduled meeting, including a comparison between the Board's previously approved parameters and the actual results of the bond pricing.

R590-7. Requirements for Institutions to Issue Refunding Revenue Bonds: Consistent with Utah Code §53B-21 and §11-27, legislative authorization is not required for bonds that refund prior issued revenue bonds. Institutions shall:

7.1. **Appointment of Bond Counsel:** Institutions shall request the Office of the Commissioner to obtain bond counsel through the Attorney General.

7.2. **Board Approval through Resolution:** After the appointment of bond counsel, institutions shall submit a proposed approving resolution for Board approval, authorizing the issuance and sale of revenue bonds refunding a prior issuance. The approving resolution shall:

7.2.1 Be prepared by bond counsel and include the provisions necessary to complete the transaction and issue the bonds.

7.2.2 Include the parameters for principal maturity date, discounts and interest rates.

7.2.3 Be submitted to the Office of the Commissioner for review prior to the Board's meeting. When practicable, institutions shall submit the proposed approving resolution 15 days prior to the meeting but no later than 7 days.

7.2.4 May request authority to issue bonds at an unspecified future date contingent on favorable interest rates if the approving resolution limits the maximum amount of principal that may be refunded, establishes an expiration date on the authorization not to exceed 18 months from the date of approval, and sets a minimum net present value savings that will be achieved.

7.3 **Issuing the Bonds:** After the Board has authorized the institution to issue the bonds, the institution shall coordinate and issue the bonds with the assistance of an independent registered municipal advisor and underwriter or team of underwriters hired to market and sell the proposed bonds. The Board Chair, Board vice-chair, or Finance and Facilities Committee chair shall formally participate in the sale of the bonds and affirmatively authorize, either in person or via conference call, the final terms and conditions for the sale of bonds consistent with the approving resolutions.

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