

REVISION TO BOARD POLICY REGARDING ECONOMIC FEASIBILITY OF BOND ISSUES

The following revisions are recommended to the current board policy regarding Economic Feasibility of Bond Issues. Additions are highlighted by underline and deletions by strikethrough.

REVISION OF REGULATIONS REGARDING ECONOMIC FEASIBILITY OF BOND ISSUES

In its regular meeting January 14, 1975, the State Board approved "Regulations Regarding Economic Feasibility of Bond Issues". Procedures were amended by the State Board in 1975, 1992, and 1993 based on changes in the statutes regarding sales of bonds. The changes included allowing the use of a fiscal agent for the sale of bonds, revising the interest rate from 10 percent max to the limit allowed by state law, allowing community and technical colleges to pledge tuition and fees for capital projects, and permitting negotiated bids as well as sealed bids for sales.

In view of the fluctuations in bond interest rates and the lack of not only capital funds from the state but also tight operating budgets from the economic downturn, the staff believe further revision of the policy is warranted. There are two limitations, which refer to bond issues containing a refinancing, in the current regulations that should be reviewed and amended. The limitations are on the length of the bond term and the interest rate. The amendments would eliminate tying the term of the new bond to the term remaining on the original bond and would eliminate the requirement that the interest rate of the new bond be equal to or lower than the interest rate on the bond being refinanced. The statutes are silent as to the term and the interest rate on refinancing bonds; however, A.C.A. § 19-9-304 allows, for refunding bonds issued by any county, municipality, school district, or improvement district, an interest rate on the new bond that is higher than the interest rate on the bond being refinanced as long as the new rate is not higher than the rate allowed by law at the time of the original bond's sale.

On April 25, 2003, the Higher Education Coordinating Board approved the following resolution (Agenda Item No. 4):

RESOLVED, That the Arkansas Higher Education Coordinating Board repeals or revises the aforementioned policies as outlined above, effective April 25, 2003.

**ARKANSAS HIGHER EDUCATION COORDINATING BOARD
REGULATIONS REGARDING ISSUANCE OF BONDS BY
INSTITUTIONS OF HIGHER EDUCATION**

I. Compliance with State Law

The structure and sales of bonds issued by state institutions of higher education shall be in conformance with all relevant provisions of state and federal law, and may contain such terms as specified by the local board in its authorizing resolution which are in compliance with state and federal law and Coordinating Board policy. Should any provision of State Board policy be found to be in conflict with state or federal law, the provisions of the law will supersede Coordinating Board policy, but other provisions contained herein shall not be affected.

II. Interest Rates

The maximum rate of interest shall be set by Arkansas law for four-year institutions and their branches, and for community and technical colleges (i.e., 5 percent per annum above the Federal Reserve Discount Rate on ninety-day commercial paper in effect in the Federal Reserve Bank in the Federal Reserve District in which Arkansas is located); the maximum interest rate established by law for the University of Arkansas law schools at Fayetteville and Little Rock is 10 percent.

III. Professional Support

In consideration of the complexities of issuing bonds, institutions of higher education are encouraged to obtain the professional advice necessary to insure that the issuance of bonds is based on the most favorable terms for the institution and in compliance with applicable state and federal laws and Coordinating Board policy.

IV. Bonds Generally

A. The bonds shall be authorized by resolution of the institutional board of trustees, and the bonds shall be secured solely by the revenues pledged thereto, and shall not be considered a debt of the State of Arkansas.

B. The maximum term of obligation of a series of bonds may not exceed thirty (30) years.

V. Bond Sales

- A. Bonds may be sold either on sealed or negotiated bid, whichever is considered likely to yield the most favorable terms for the institution.
- B. Notification of bonds to be sold at public sale shall be given wide distribution, including advertisement in an Arkansas newspaper that has a general statewide circulation, plus advertisements in any other publication necessary to reach the appropriate market. Notice of the sale must be published at least once a week for three consecutive weeks, with the first publication at least twenty (20) days prior to the date of sale. In addition, it is recommended that a copy of the Preliminary Official Statement (POS) be sent to the The Bond Buyer (or its successor). Paid advertisement in The Bond Buyer is not required.
- C. If the bonds are sold at public sale, the sale of the bonds shall be awarded to the bidder whose bid results in the lowest net interest cost, taking into account any premium or discount contained in such bid.

VI. Review by the Arkansas Higher Education Coordinating Board

- A. Prior to the official marketing process, the Arkansas Higher Education Coordinating Board shall review the economic feasibility of the project(s) to be financed, in whole or in part, by the issuance of bonds by public institutions of higher education, and report to the institutions its advice within thirty days of the board meeting at which the feasibility is reviewed.
- B. Requests for Coordinating Board review must be accompanied by a copy of the local board's resolution authorizing the bond issue and the projects to be funded; a description of the project(s), including the current (for renovation projects) and projected use of buildings, land acquisition, etc.; and a summary description of debt specifying the following:
 - 1. The total amount, term of obligation, and estimated maximum interest rate of the bond issue
 - 2. The estimated annual debt service for the new issues
 - 3. The source of revenue for debt service and the estimated annual revenue from that source
 - 4. Existing annual debt service by revenue source

5. **A plan for maintaining the new facility such as:**
 - **Establishment of an endowment fund for building maintenance**
 - **A portion of the annual operating budget to be set aside**
 - **Other methods**
 6. Any other information deemed necessary for complete and informed review by the Coordinating Board.
- C. When considering its advice on the economic feasibility of projects, the Coordinating Board shall consider the following guidelines in determining prudent debt service limits:
1. Educational and general projects may be financed by obligating a maximum of 25 percent of **net** student tuition and fee revenue **(gross tuition and fees less unrestricted educational and general scholarship expenditures)** for total debt service, or institutions may obligate dedicated building use fees so long as annual building use fee revenue is no less than 120 percent of annual debt service; in addition, higher education institutions may obligate local tax or special millage so long as the annual tax proceeds equal no less than 120 percent of the total annual debt service.
 2. Auxiliary projects may be financed by auxiliary revenues, dedicated building use fees, or local tax or millage so long as annual revenue from these sources is no less than 120 percent of total annual debt service.

General revenue may not be pledged in support of debt for any project.

Approved: Agenda Item No. 19
January 14, 1972

Approved: Agenda Item No. 7
July 23, 1993

Amended: Agenda Item No. 4
April 25, 2003

ADHE Executive Staff recommend that the Arkansas Higher Education Coordinating Board approve the following resolution:

RESOLVED, That the Arkansas Higher Education Coordinating Board revises the aforementioned policies as outlined above, effective October 14, 2008.