

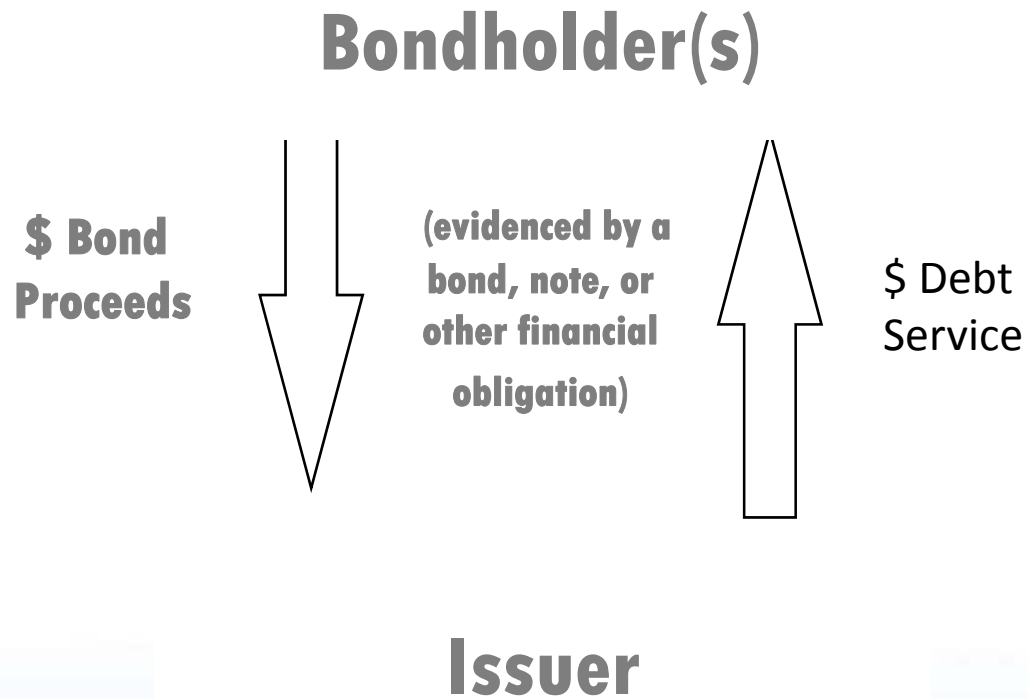
BUTLER | SNOW



BOND BASICS FOR COUNTIES:
***WHAT EVERY COMMISSIONER SHOULD KNOW ABOUT BONDS
AND DEBT***

Dee Wisor
Butler Snow LLP
(720) 330-2357
dee.wisor@butlersnow.com

BASIC BOND TRANSACTION



CONSTITUTIONAL CONSIDERATIONS

- **Article X, Section 20 (“TABOR”) requires voter approval for multiple fiscal year financial obligations and new or increased taxes.**
 - **Election is required to be held in November.**
 - **No election required for:**
 - **Refunding at a lower rate.**
 - **Lease purchase agreement which is subject to annual appropriation.**
 - **certificates of participations or COPs.**
 - **Enterprise borrowing.**

CONSTITUTIONAL CONSIDERATIONS

- **TABOR Enterprise:**
 - **Government owned business (water, sewer, golf course etc.).**
 - **which receives less than 10% of its annual revenues in the form of grants from the state or Colo. local governments.**
 - **with the power to issue revenue bonds.**

CONSTITUTIONAL CONSIDERATIONS

- **Article XI, Section 6 requires voter approval of general obligation debt.**
 - **Requires bonds be issued pursuant to irrevocable ordinance or resolution which provides for ad valorem property tax to be levied to pay debt.**
 - **Debt mill levy is exempt from 5.5% property tax revenue limit in 29-1-301.**
 - **General Assembly to establish debt limit by statute.**

GENERAL TYPES OF BORROWINGS

- **New Capital Projects.**
- **Cash Flow Needs.**
- **Refundings.**

TYPES OF SECURITY

- **General Obligation.**
- **Revenue Pledge.**
- **Special Assessment.**
- **Lease-Purchase Agreements (COPS) or Lease Revenue Bonds.**
- **Conduit or Private Activity Bonds.**

GENERAL OBLIGATION BONDS

- **Counties authorized to issue pursuant to 30-26-301 to 305.**
 - **Election required.**
- **Pledge of ad valorem tax and full faith and credit.**
 - **Usually unlimited tax pledge.**
- **Debt limit is three percent of actual value.**

ENTERPRISE REVENUE BONDS

- **No election required if TABOR test is met.**
- **Payable from net revenues of the enterprise.**
- **Counties authorized to issue:**
 - **Water and sewer revenue bonds. 30-20-401 to 422.**
 - **Revenue anticipation warrants. 30-20-301 to 310.**
 - **Capital improvements trust fund. 30-26-501 to 513.**
 - **Airport revenue bonds. 41-5-101 to 109.**
 - **Airport authority. 41-3-101 to 108.**
 - **Hospitals 25-3-301 to 315.**

SALES TAX REVENUE BONDS

- **Election required.**
- **Payable from sales and use tax revenues deposited to capital improvement fund.**
- **Counties authorized to issue pursuant to 29-2-111 and 112.**
- **No debt limit.**

SPECIAL ASSESSMENT BONDS

- **Election required.**
- **Payable from special assessments which are imposed against property which is specially benefitted by improvements being constructed (for example, property abutting street which has been paved).**
- **Special assessments are imposed within local improvement district created by county (Section 30-20-601 to 628).**
- **LID is not a separate legal entity-simply area within which assessments are levied.**

SPECIAL ASSESSMENT BONDS

- **Improvements which can be constructed generally include improvements like streets, water, sewer.**
- **Assessment may not exceed the benefit received by the property.**
 - **Generally measured by increase in market value of property.**
- **District formation is initiated after petition of owners or by resolution of BOCC.**
 - **After notice and hearing, district may be formed by governing body unless owners of property to be assessed more than one-half of costs object.**
- **Special assessments are levied after second notice and hearing process.**

SPECIAL ASSESSMENT BONDS

- **No election required to levy assessments.**
- **Assessments are a lien on the property superior to all but property tax liens.**
- **Assessments may be paid in lump sum or in installments with interest; failure to pay causes delinquency and entire amount is accelerated. Foreclosure is usually at property tax sale.**
- **Assessments collected by county treasurer.**

LEASE PURCHASE FINANCINGS

- **A lease with an option to purchase which is subject to annual renewal or termination is not a constitutional debt. Counties authorized pursuant to 30-11-104.1 and 104.2.**
 - **No election required.**
- **Can be used for buildings, equipment and real property.**
- **Lease payments made from any legally available county funds.**

LEASE PURCHASE FINANCINGS

- **Interest component of rental payment is exempt from gross income for federal tax purposes.**
- **Leased property is exempt from property taxes.**
- **Often involve issuance of certificates of participation which represent the right of an investor to receive a portion of the lease payments.**

PUBLIC IMPROVEMENT DISTRICTS

- **County may form PID pursuant to Section 30-20-501 to 30-20-534.**
 - **Petition, notice of hearing, election.**
- **Used to provide improvements or services in a part of the county.**
- **Separate legal entity.**
 - **BOCC is the governing body of the PID.**
 - **Subject to TABOR.**
- **Revenues:**
 - **Property taxes.**
 - **Special assessments.**
 - **Fees and charges.**
- **May issue bonds.**

INDUSTRIAL DEVELOPMENT BONDS

- Also known as private activity bonds or conduit bonds.
- County may issue pursuant to 29-3-101 to 29-3-123.
- Bonds are issued to finance economic development projects.
- County issues bonds and loans proceeds to for profit or non-profit borrower.
- No county revenues or assets pledged so no election required.
- Significant federal tax restrictions.
 - State volume cap applies to some types of IDBs.

OTHER FINANCING TOOLS

- **County Housing Authority. 29-4-501 to 29-4-509.**
- **Public Highway Authority. 43-4-501 to 43-4-522.**
- **Regional Transportation Authority. 43-4-601 to 43-4-621.**
- **Scientific and Cultural Facilities District. 32-13-101 to 32-13-114.**
- **Mental Health Care Service District. 32-17-101 to 32-17-114.**
- **Health Assurance and Health Service District. 32-19-101 to 32-19-115.**
- **Special Districts Title 32, Article 1.**

OTHER FINANCING TOOLS

- **Forest Improvement District. 32-18-101 to 32-18-109.**
- **Regional Tourism Authority. 24-46-301 to 24-36-310.**
- **Water or Drainage Authority. 29-1-204.2.**
- **Multi-jurisdictional Housing Authority. 29-1-204.5.**
- **County Libraries and Library Districts. 24-90-101 to 24-90-119.**

PARTIES INVOLVED IN A BOND ISSUE

- **Financing Participants**
 - Underwriter
 - Financial Advisor/Municipal Advisor
- **Attorney Participants**
 - Issuer's Counsel
 - Bond Counsel
 - Disclosure Counsel
 - Underwriter's Counsel
 - Borrower's Counsel (conduit)
 - Trustee's Counsel
- **Administrative Participants**
 - Paying Agent
 - Registrar
 - Trustee
- **Other Participants**
 - Bond Insurers
 - Letter of Credit Providers
 - Rating Agencies

CREDIT ENHANCEMENT

- **Bond Insurance.**
- **Letter of Credit.**
- **Guaranty of Beneficiary.**

COMPETITIVE V. NEGOTIATED SALES

- **There are three ways to sell bonds:**
 - **Negotiated Sale.**
 - **Competitive Sale.**
 - **Private Placement.**

STEPS IN ISSUANCE OF BONDS

- **Election, if necessary.**
- **Issuer may adopt Sale and/or Reimbursement Resolution.**
- **Underwriter or Financial Advisor together with Issuer and Bond Counsel structure transaction and prepare documents.**
- **Ratings and/or insurance obtained.**

STEPS IN ISSUANCE OF BONDS

- **Issuer approves documents. Where delegation is permitted this occurs before sale; otherwise this occurs after sale.**
- **Bond Sale.**
- **Closing.**

ELECTIONS

- **In Colorado, elections are required for most borrowings because of TABOR.**
- **Exceptions are:**
 - **Lease-Purchase Agreements (COPs).**
 - **Refundings at a lower rate.**
 - **Obligations paid within the fiscal year (TANS).**
 - **Urban Renewal Authority debt.**
 - **Enterprise (water, sewer, golf course, airport, etc) obligations.**
 - **Obligations for which the issuer has current cash to pay all future payments.**

INDEX OF DOCUMENTS

BASIC DOCUMENTS

- Election Proceedings
- Bond Resolution/Ordinance
- Registrar and Paying Agent Agreement
- DTC Blanket Issuer Letter of Representations
- Sale Certificate

DOCUMENTS FURNISHED BY THE ISSUER

- Omnibus Certificate
- Continuing Disclosure Certificate
- Federal Tax Exemption Certificate
- Form 8038-G

UNDERWRITING DOCUMENTS

- Preliminary Official Statement
- Official Statement
- Bond Purchase Agreement
- Certificate of Underwriter
- Rating Letters

DOCUMENTS FURNISHED BY REGISTRAR AND PAYING AGENT

- Certificate of Bank

INDEX OF DOCUMENTS

- **MISCELLANEOUS DOCUMENTS**
 - **Opinion of Bond Counsel.**
 - **Opinion of Special Counsel.**
 - **Opinion of Counsel to the Issuer.**
 - **Accountant's Consent.**
 - **Closing Memorandum.**

FEDERAL TAX ISSUES



IRS

Department of the Treasury
Internal Revenue Service

ARBITRAGE

- **In general, an issuer cannot arbitrage by issuing tax-exempt bonds and reinvesting the proceeds in securities with a higher interest rate.**
- **There is a three year temporary period where an issuer may invest at a higher yield if the issuer reasonably expects on the date of issuance to spend 85% of the proceeds within three years.**

REBATE

- **Even though the rules permit certain arbitrage to occur, an issuer in general must rebate to the federal government the amount by which its investment earnings exceed the yield on its bonds.**

PRIVATE ACTIVITY/PRIVATE USE

- **If there is too much private business use of a tax-exempt bond financed facility and there is too much private security for payment of the bonds, the tax exemption is lost.**
 - **Usually the threshold is 10%.**

AUDITS

- **The IRS audits state and local governments for compliance with the tax law rules.**
 - **Sometimes random and sometimes targeted.**

FEDERAL TAX ISSUES

- **Bank-qualified bonds**
 - **Banks can get a tax benefit by investing in tax-exempt bonds of small issuers.**
 - **A small issuer is one which reasonably expects to issue less than \$10,000,000 in bonds in a calendar year.**

SECURITIES LAW COMPLIANCE

THE SECURITIES AND EXCHANGE COMMISSION

Policing the Markets to Protect Investors Since 1934



SECURITIES LAW COMPLIANCE

- **Municipal bonds are “securities” which are exempt from registration requirements of Section 3(2) of the Securities Act of 1933.**
- **Subject to Antifraud provisions Section 10(b) of the Securities Exchange Act of 1934.**

PRIMARY MARKET DISCLOSURE

- **The Official Statement-prepared by, or on behalf of, an issuer on connection with the initial offer and sale of bonds.**
 - **Discloses all material facts**
 - **Generally includes:**
 - **Operating and financial information**
 - **Audited financial statements**
- **The OS is the issuer’s document and the issuer is responsible for its accuracy and completeness.**
- **SEC Rule 15c2-12 requires underwriters to obtain and review a “near final” OS and provide it to investors.**

SECONDARY MARKET DISCLOSURE

- **SEC Rule 15c2-12 governs continuing disclosure.**
- **The Rule prohibits underwriters from underwriting most bond issues unless the issuer has agreed (in writing) to provide continuing information to the market :**
 - **CAFR/audit annually.**
 - **Annual updates to financial and operating information of the type contained in the Official Statement.**
 - **Timely notice (within 10 business days) of the occurrence of any of the 14 specific events listed in the Rule.**

SECONDARY MARKET DISCLOSURE

Filings are done through “Electronic Municipal Market Access” (“EMMA”) website at www.msrb.emma.org.

QUESTIONS

&

ANSWERS