



Bonds & Public Finance Adapted from City, County, and Local Government Law Certification Exam Review Course

March 1, 2024

What is a Municipal Bond?



Municipal bonds (or “munis” for short) are debt securities issued by states, cities, counties and other governmental entities to fund day-to-day obligations and to finance capital projects such as building schools, highways or sewer systems. By purchasing municipal bonds, consumers are in effect lending money to the bond issuer in exchange for a promise of regular interest payments, usually semi-annually, and the return of the original investment, or “principal.”

<https://www.sec.gov/munied>

What is a Municipal Bond?

MSRB Glossary of Municipal Securities Terms



https://www.msrb.org/sites/default/files/2022-08/MSRB-Glossary-of-Municipal-Securities-Terms-Third_Edition-August-2013.pdf

<http://www.ngnlaw.com>

BOND – (1) The written evidence of debt, which upon presentation entitles the bondholder or owner to a fixed sum of money plus interest. The debt bears a stated rate(s) of interest or states a formula for determining that rate and matures on a date certain. (2) For purposes of computations made on a “per bond” basis, a \$1,000 increment of a security (no matter what the actual denominations are) (e.g. 10 bonds refers to a \$10,000 investment). (3) Generally refers to debt securities with a maturity of greater than the short-term range.

What is a Municipal Bond?

- Issuer: City, County, or Local Government issuing the bond/debt
- Conduit Borrower: nonprofit college or hospital, for example; the local government issues debt on their behalf
- Bond Counsel – retained to give the traditional bond counsel opinion: bonds have been validly issued and, if intended, are tax-exempt.
- Disclosure Counsel – Retained by issuer to provide advice on issuer disclosure obligations and to prepare the official statement and/or continuing disclosure agreement.



https://www.msrb.org/sites/default/files/2022-08/MSRB-Glossary-of-Municipal-Securities-Terms-Third_Edition-August-2013.pdf

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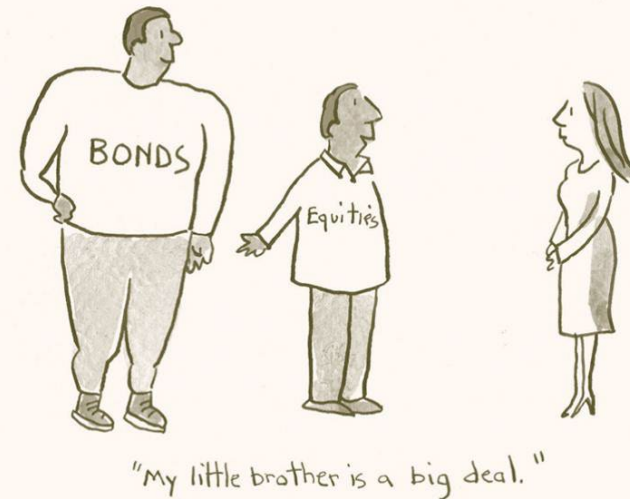
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I. Summary of Classifications of Municipal Bonds

Under Florida law and laws of most states, two significant classifications of public debt are used:

A. General Obligation Bonds

B. Revenue Bonds



I. General Obligation and Revenue Bonds

General Obligation Bonds

1. Security is the full faith and credit of an issuer with taxing power.
2. Subject to referendum and may only be issued for “capital projects.”
3. General description of the provisions of Florida law relating to the holding of a referendum election may be found in [Chapter 100](#) and [Chapter 101](#), Florida Statutes.
4. Generally, a second referendum **is not** required for bonds issued to refund or refinance bonds which were subject to the referendum if the refunding or refinancing results in a lower net average interest rate.
5. Maturing more than 12 months (if less than 12 months a referendum is not required).

I. General Obligation and Revenue Bonds



Revenue Bonds

1. Revenue bonds are debt obligations in which:
 - (i) the full faith and credit of an issuer with taxing power is not pledged, but are payable from specific revenue sources; and
 - (ii) Do not permit the bondholders to compel taxation or legislative appropriation of funds not pledged for payment of debt service.
2. Generally, no voter approval is required under state law prior to issuance.

I. General Obligation and Revenue Bonds

Revenue Bonds

Examples:

- (i) Bonds payable from utility revenues (i.e. water and sewer revenues);
- (ii) Bonds payable from various sources of non-ad valorem revenues such as excise taxes, gas taxes or state revenue sharing moneys (e.g. Guaranteed Entitlement Revenues and the Local Government Half-Cent Sales Tax).

“Covenant to Budget & Appropriate”

- Secured by a covenant of the local government to budget and appropriate legally available non-ad valorem revenues for the payment of debt service.
- Not secured by a specific lien upon or pledge of specific non-ad valorem revenues.
- Covenant is subject to the requirement that the local government pay for all essential governmental services.

I. General Obligation and Revenue Bonds

Revenue Bonds



“Certificates of Participation” (aka “COPs”)

- Developed in the late 1980’s and early 1990’s by local governments searching for additional and innovative methods of financing local government projects.
- Represent an undivided interest in lease payments from a local governmental unit.
- Local government enters into a lease agreement with a not-for-profit corporation.
- The trustee sells interests in the lease agreement to outside investors.
- Outside investors hold a certificate representing the right to participate in the lease payments.
- Lease is subject to appropriation every year.
- Lease terms coincide with the fiscal year of the issuer, and if no appropriation is made, the lease terminates.
- Lease may be payable from any revenues of the local government, including ad valorem taxes.

I. General Obligation and Revenue Bonds

Revenue Bonds

Equipment leases

- Typically used for computer, vehicle and other equipment financings.
- Annual lease payments are subject to appropriation and no revenue stream is pledged.
- Similar to COPs , on a smaller scale without the public issuance and sale of COPs.
- Same form documentation from vendors include a covenant to budget and appropriate the lease payments each year, which would make that particular transaction more akin to general revenue bonds.
- Remedies should be limited to traditional lease remedies, such as return of property – foreclosure cannot be a remedy (without a referendum) due to the restrictions on a local government's ability to mortgage property or grant a security interest in property.

I. General Obligation and Revenue Bonds

Revenue Bonds

Conduit Bonds

- Includes conduit bonds issued by:
 - i. local Industrial Development Authorities;
 - ii. Housing Finance Authorities;
 - iii. Health Facility Authorities; and
 - iv. other governmental units on behalf of an underlying borrower.
- May also be issued directly by cities, counties and some other governmental entities.
- Usually payable solely from revenues derived from loan, lease or installment sale payments with the private party utilizing bond proceeds.
- Specifically authorized by statute, for example, [Ch. 243](#) (Educational Facilities), [Ch. 154](#) (Health Facilities), and [Ch. 159](#) (Industrial Development, Housing Development and Research Development).

I. General Obligation and Revenue Bonds

Revenue Bonds:

Community Redevelopment Agency/Tax Increment Bonds (a.k.a. “TIF Bonds”)

- Issued under Ch. 163 for purposes of community redevelopment
- Often payable from the “tax increment” or the difference between the assessed value of the property before and after the redevelopment project.
- On September 18, 2008, the Florida Supreme Court released Strand v. Escambia County, upholding the constitutionality of TIF Bonds without referendum approval.



I. General Obligation and Revenue Bonds

Revenue Bonds:

Special Assessment Bonds

- Since special assessments do not constitute ad valorem taxation, bonds payable from special assessments on property specifically benefitted from the improvements are considered revenue bonds.
- For example, a bond backed by a road assessment on property specifically benefitting from the road.

I. General Obligation and Revenue Bonds

Revenue Bonds

Public Offerings/Private Placements

- **Public Offerings:** Bonds offered through underwriting by an investment banking firm acting on behalf of the government are referred to as “publicly offered.”
 - Publicly offered municipal bonds involve the preparation and distribution of offering materials (typically referred to as an official statement) to prospective purchasers of the bonds.
- **Private Placements:** Unlike a public offering, a private placement typically involves the purchase of a single bond for the entire par amount of the issue by a financial institution which will hold the bond as security for the loan of the proceeds of the bond to the government.

II. Issuance



Constitutional Restrictions

- Public Purpose
- No Lending Credit
- No Mortgage
- Extraterritorial Powers

II. Issuance

Public Purpose

- Projects to be financed by municipalities must constitute a valid municipal purpose.
- Municipalities have governmental, corporate and proprietary powers to enable them to conduct municipal functions and render municipal services, and may exercise any power for municipal purposed except as otherwise provided by law.



II. Issuance

Public Purpose

- Charter counties have all powers of local self-government not inconsistent with general law.
- Non-Charter Counties have such powers of self-government as is provided by general or special law. The board of the county commissioners of a county not operating under a charter may enact county ordinances not inconsistent with general or special law.
- What constitutes a public purpose has changed over the years. Great deference is paid to a legislative finding of public purpose. Generally, courts will not overturn legislative finding of public purpose unless clearly erroneous.

II. Issuance



No Lending of Credit

- Art. VII, Sec. 10, Florida Constitution, prohibits municipal corporations from giving, lending or using their taxing power or credit to aid any corporation, association, partnership or person.
- State v. Miami Beach Redevelopment Agency, 392 So. 2d 875 (Fla. 1980) contains a detailed analysis of this constitutional provision and the public purpose test to be met before a municipality's credit may be pledged to a bond issue. The lending of credit test is closely related to the public purpose test.

II. Issuance

No Mortgage

- Generally, local governments may not secure debt obligations with a mortgage or public property.
- This restriction on mortgages includes granting security interest in property, including purchase money security interests. This issue is raised particularly in the area of equipment, and other leasing as discussed above, as well as installment sales. Under this rule, a local government with taxing power may not grant a security interest in public property, absent voter approval.
- This rule does not apply, however, to the pledging of a revenue stream to the repayment of debt.

II. Issuance

Extraterritorial Powers

- The exercise of extra-territorial powers by municipalities shall only be as provided by general or special law – Article VII, Section 2(c), Florida Constitution.
- Chapter 180, Florida Statutes, authorizes the extension of utility services outside the corporate limits of a municipality.
- Florida case law does not specify a limitation of the geographic area in which a municipality may extend its municipality utility services.
- The Florida Supreme Court has upheld the exercise of extraterritorial powers, particularly with respect to proprietary projects, by municipalities where such powers are supported by, or derived from, a legislative agent.

II. Issuance

Extraterritorial Powers (continued)

- On April 18, 2019 the Supreme Court of Florida ruled on a extraterritorial powers case in Halifax Hosp. Med. Ctr. v. State, 278 So. 3d 545 (Fla. 2019). Halifax (a special district) was found not to be authorized to undertake a project outside of its geographic boundaries notwithstanding its interlocal agreement with the City of Deltona.
- Section 125.01(1)(p), Florida Statutes, provides that a county has the power to enter into agreements with other government units within or outside the boundaries of the county for joint performance or for performance by one unit on behalf of the other for any of either agency's authorized functions.

II. Issuance

Statutory Authorization and Restrictions

- Typical Revenue and General Obligation Bonds
 - Part II of Chapter 166 contains the basic home rule power for cities to issue bonds or incur debt.
 - Chapter 125 provides basic authority for counties to issue bonds.



II. Issuance

Statutory Authorization and Restrictions

- Other authority is contained in Chapter 132, 153 and 159, Florida Statutes.
 - Interestingly, Chapter 166, Part II, Florida Statutes authorizes the issuance of revenue bonds for “any capital or other project.”
- Certificates of Participation
 - There are certain statutory provisions relating to the lease purchase of facilities for school districts (Sect. 1013.15) and counties (Sect. 125.031).
 - Cities may enter into lease purchase transactions under home rule powers.

II. Issuance

Statutory Authorization and Statutory Restrictions

Conduit Bonds

- Chapters 159, Parts II and III provides basic authority for issuance of a broad range of conduit bonds (e.g. manufacturing facilities, tourism facilities, educational facilities and social service facilities). These bonds may not be payable from revenues of the issuer, other than revenues received under the loan agreement.
- Chapter 154, Part III provides authority for the issuance of bonds to finance health facilities.
- Chapter 159, Part IV provides authority for the issuance of bonds to finance housing projects. Article VII Section 16, Fla. Const. provides that when authorized by law, revenue bonds may be issued without an election to finance or refinance housing or related facilities in Florida.
- Chapter 159, Part IV provides that each county of the state may create a housing finance authority to facilitate the construction and rehabilitation of housing for low-income families using public financing.

II. Issuance

Statutory Authorization and Statutory Restrictions

Community Redevelopment Agency and Tax Increment Bonds

- Part III of Chapter 163 establishes the Community Redevelopment Act
- Any county or municipality may create a community redevelopment agency by finding that one or more slums or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents or low or moderate income exist in the community, and that rehabilitation, conservation or redevelopment of such an area is necessary in the interest of the public health, safety, morals or welfare of the residents.
- The purpose of the redevelopment project is the elimination and prevention of the development or spread of slums and blight, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income.
- “Slum area” or “blighted area” may not be limited to typical downtown areas needing revitalization.
- Section 163.385 authorizes the governing body of a county or municipality to issue redevelopment revenue bonds and refunding bonds to finance any undertaking of any community redevelopment plan.

II. Issuance

Statutory Authorization and Statutory Restrictions

Special Assessment Bonds

- A special assessment is a charge imposed against property in a particular locality because that property receives a special benefit by virtue of some public improvement, separate and apart from the general benefit accruing to the public at large.
- Special assessments must be apportioned according to the value of the benefit received, rather than the cost of the improvement, and may not exceed the values of such benefit or the cost of the improvement.
- Chapter 170 Florida Statutes is the general law providing for special assessment by municipalities. Assessments for counties are generally levied pursuant to an ordinance enacted under Chapter 125, Florida Statutes.
 - Chapter 170 authorized special assessment for statutorily enumerated projects.

II. Issuance

Statutory Authorization and Statutory Restrictions

Special Assessment Bonds (continued)

- Section 170.11 provides that bonds may be issued to an amount not exceeding the amount of liens assessed for the cost of improvements to be paid by special assessment. The equalization, approval and confirmation of the levying of the special assessments for improvements must be completed before the governing authority authorizes the issuance of the bonds.
- An alternative form of authority may be in the form of a municipal ordinance adopted in accordance with home rule power.
- Thus, municipalities are able to broaden the qualifying projects and simplify the procedural requirement by an enactment of alternative authority for the imposition of special assessments.
- Chapter 153 also provides statutory authority for the imposition of special assessments by counties in connection with improvements to water and sewer system, as well as the authority for the issuance of bonds for water and sewer system improvements, including acquisitions.

II. Issuance

Statutory Authorization and Statutory Restrictions

Others

- [Part VII of Chapter 159](#) provides the procedure for issuing taxable bonds.
- [Chapter 190](#) provides authority for issuance of bonds by Community Development Districts.
- [Chapter 189](#) provides restrictions on the issuance of certain types of debt by special districts.
- [Chapter 129.07](#) provides a limitation on Counties on entering into a contract or expending county funds in excess amounts appropriated in the budget. Contractual provisions in debt instruments requiring a Florida County to pay amounts which are not quantified and are open ended should be analyzed under this statute and under the process or budgetary amendments.
- [Section 768.28, Florida Statutes](#), provides a limited waiver of sovereign immunity in tort actions by the State or any of its agencies or subdivisions. Sovereign immunity can be waived by contract. See [Am. House Assur. Co. v. Nat'l R.R. Passenger Corp.](#), 908 So. 2d 459 (Fla. 2005). It is not unusual for debt instruments to include provisions requiring indemnification from an issuer or a borrower for the benefit of another transaction participant. Care must be taken to review such provisions and, unless intentional, to expressly align the governmental entities indemnification exposure to that provided for in Section 768.28, Florida Statutes.

II. Issuance

Charter and Ordinance Restrictions

- In addition to constitutional and statutory restrictions, practitioners should be aware the local charters and ordinances may contain additional restrictions for issuance of debt (e.g. all bonds be signed by the City Attorney or issuance of bonds secured by taxes).
- Authorization of bonds by ordinance will not repeal any conflicting provisions of ordinances of local government.



II. Issuance

Contractual Restrictions

- A review of possible contractual prohibitions should be made prior to the issuance of the bonds (e.g. “parity” provisions in outstanding bond documents regarding whether the debt sought to be issued may have equal lien status with the existing debt.
- In covenant to budget and appropriate transactions, an anti-dilution test may be present which provides that no debt will be issued unless non ad-valorem revenues are at certain levels.
- Other documentary provisions may include restrictions on use of revenues and consent procedures from credit enhancers or bondholders.
- Additional restrictions may also be found in contractual documents with vendors, credit providers and other contracting parties with local governments.

II. Issuance

Pledge and Lien on Revenues

- Often, local governments issue bonds payable from a specific revenue source.
- To secure payment, the bond resolution or ordinance, authorizing the issuance of bonds typically provides for the creation of various funds and accounts to provide a tracking of the pledged revenues. These provisions also ensure the revenues are in trust funds. Security arrangements are particularly important to holders of revenue bonds, who cannot look to ad valorem taxing power of the issuer for repayment.
- Bondholders often require attorneys to provide a legal opinion to the effect that the security interest in revenues is valid and binding. Outside of the public arena, laws regarding the creation and perfection of security interests are contained in Article 9 of the Uniform Commercial Code(UCC).

II. Issuance

Pledge and Lien on Revenues

In 2001, the Florida Legislature adopted revisions to Florida's uniform commercial code relating to secured transactions (Ch. 679). Under the rewritten code, transfers by the governments and governmental unites continue to remain exempt from the provisions of the uniform commercial code relating to securing transactions (§679.1091(4)(n)).



II. Issuance

Pledge and Lien on Revenues

- The creation of a pledge of revenues may be accomplished through a trustee or through the creation of trust funds and accounts. Most Florida statutes providing for issuance of bonds also include language regarding the validity of a pledge.
- If validly pledged, the revenues may not be repealed by the local government or the Florida Legislature because of the protection of the Contracts Clause in [Article I, Section 10 of the Florida Constitution](#). **However**, with revenues not controlled by local governments, it is important to find specific authority to pledge such revenues and to ensure that Legislature has not reserved the right to revoke this funding source in the future or been silent on the issue.
- The Impairment of Contracts doctrine is a clause to both federal and state Constitution Law.
- Historically, the Legislature has taken great care to ensure that bondholders secured by revenues that are affected by state law are not negatively affected. See [§202.41](#) providing that revenue received by a taxing authority under the communication services taxes shall redeem to replace any taxes or fees repealed by that act. Absent specific authority to pledge the revenues, however, there may be some cause for concern that the Legislature may reduce amounts from revenue sharing without replacing such revenue sources elsewhere.

III. Bond Validation

- Chapter 75 provides for circuit court validation proceedings confirming the legality and authority for issuance of bonds, bonded debt, certificates of debt and matters related thereto, prior to the issuance of such obligations.
- The issuer files the validation action and seeks an order to show cause why the bonds should not be validated and the local state attorney defends the action.
- Case law also addresses validation of interlocal agreements under which a local government is obligated to make payments and lease purchase agreements.
- Issues to be considered in a validation proceeding include:
 - The validity of any taxes;
 - Assessments or revenues which are pledged for repayment of the bonds; and
 - Proceedings authorizing the issuance of the bonds and any remedies provided for their collection
- Collateral issues should not be considered.

III. Bond Validation

- Independent Special Districts must allege in the complaint the creation of a trust indenture established by the petitioner for a bonded trustee, acceptable to the court, who shall certify the proper expenditure of the proceeds of the bonds.
- Procedural matters:
 - The plaintiff in a bond validation proceeding is the issuer of the bonds (e.g. county, municipality, taxing district or other political district of the state);
 - The State Attorney is served with the complaint and represents the “defendant” State and property owners, although property owners and affected persons may intervene; and
 - Section 75.06, Florida Statutes requires an Order to Show Cause to be published a week for 2 consecutive weeks, the first publication at least 20 days prior to the hearing date.
- The only necessary parties are proposed issuer of the bonds and the State.
- Section 75.08, Florida Statutes, provides for direct appeal of validation orders to the Florida Supreme Court.
- Effect of Validation:
 - Binding effect of validation is based upon the doctrine of *res judicata*. Section 75.06, Florida Statutes.
 - Validation judgments may still be subject to collateral attack with respect to issues not raised and adjudicated in validation proceedings.

IV. Bond Referenda Matters

- Ch. 100 provides for specific procedures for bond referenda, but generally, procedures applicable to general elections are applicable to bond referenda.
- If a bond issue is defeated at referenda, no other referendum may be held with respect to such bonds for the same purpose for a period of 6 months.
- Ballot must include:
 - (i) the amount of the bonds to be issued;
 - (ii) a statement as to the purpose for the bonds; and
 - (iii) the rate of interest on the bonds (a statement that the interest rate shall not exceed the maximum rate permitted by law is sufficient).
- Notice of the bond referendum must be published in a newspaper of general circulation at least 30 days prior to the election, at least twice, once in the 5th week and once in the 3rd week prior to the week in which the election is to be held.
- Any taxpayer may bring a test suit within 60 days of the election to test the validity of the referendum. However, if the issuer institutes a bond validation proceeding, then any such taxpayer is bound to intervene in such validation proceeding. The court hearing on the bond validation proceeding is given exclusive jurisdiction to determine the validity of the referendum.

V. State Reporting and Disclosure

- Definitions
- Provision of Notice
- Bond Information Forms
 - Combined Form 2003/2004
 - Official Statement
 - Failure to Comply
 - Purchaser's Disclosure Statement and Truth in Bonding Statement
 - Public Sale v. Negotiated Sale
 - Interest Rates



V. State Reporting and Disclosure

Definitions

“Unit of local government”

In addition to counties and municipalities, special district, local agencies, authorities, consolidated city-county governments or any other local governmental body with the power to issue obligation or revenue bonds.

“General obligation or revenue bonds”

Debt obligations issued by units of local government which mature in more than one year, including general obligation bonds, revenue bonds, limited revenue bonds, special obligation bonds, debenture, and other similar instruments, but **not** bond anticipation notes

V. State Reporting and Disclosure Requirements

Provision of Notice

Every unit of local government is required to provide the Division of Bond Finance with advance written notice of the impending sale of its general obligation or revenue bonds. Public notice rules must be complied with for all local government meetings which authorize the issuance of the general obligation or revenue bonds, and sunshine rules should be adhered to.

Bond Information Forms (Combined 2003/2004)

- As soon as possible after general obligation or revenue bonds are issued, Form 2003/2004 must be filed with the Division of Bond Finance.
- Form 2003 includes general information about general obligation or revenue bonds, including names and addresses of participants.

V. State Reporting and Disclosure

Form 2004 & Official Statement/Disclosure Document

- Form 2004 (separate versions for competitive and negotiated sale) includes required disclosure of any fee paid by underwriter and issuer as well as underwriting spread components and other attorney and consultant fees paid; both must be filed within 120 days of issuance.
- Form 2004 forms need not be filed for certain conduit financings (industrial development bonds, health facilities revenue bonds, educational facilities revenue bonds).
- Units of local government must also file a copy of the final official statement (disclosure document) if prepared.
- Failure to comply with these reporting requirements may be reported to the Legislative Auditing Committee and could result in withholding of state funds.

V. State Reporting and Disclosure

- Purchaser's Disclosure Statement and Truth in Bonding Statement
 - Disclosure of fees paid by underwriter, including any finder's fee, must be made prior to sale of general obligation or revenue bonds.
- Finder's Fee must be disclosed in Official Statement of general obligation or revenue bonds.
- Executed Truth in Bonding Statement must be included in any proposal for the purchase of general obligation or revenue bonds (e.g. bond purchase agreement). Such statement must include identification of source of repayment for the general obligation or revenue bonds and the amount of pledged funds not available for other uses during term of general obligation or revenue bonds, as well as the forecasted rate of interest on the general obligation or revenue bonds.
- General obligation or revenue bonds must be sold at public sale by competitive bid unless certain findings have been made by resolution as to the reasons requiring the negotiated sale and determining that a negotiated sale is in the best interest of the unit of local government.

V. State Reporting and Disclosure

- For competitive sales, notice of sale must be published at least 10 days prior to sale.
- Bonds may be sold by negotiated sale if the governing body shall, by resolution adopted at a public meeting, determine that a negotiated sale is in the best interest of the issuer.
- [Section 215.84, Florida Statutes](#) sets forth the maximum rate of interest for local government bonds.
- Chapter 159 Part VII sets forth a higher rate for taxable bonds; though Section 215.84 applies to both taxable and tax-exempt bonds, Chapter 159, Part VII, Florida Statutes, is more recent, expressly supersedes any conflicting law regarding the issuance of taxable bonds ([Section 159.824, Florida Statutes](#)).
- An issuer may apply to the SBA for an exemption.
- Section 215.84(7) and (8), Florida Statutes, expressly excludes certain conduit bonds and municipal utility bonds from this limitation.

VI. Assessment, Tax, User Fees, Impact Fees

Assessments

- Charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of funds.
 - Two requirements for the levy of special assessments:
 - (1) the property must be a special benefit from the service provided or project constructed; and
 - (2) the assessment must be fairly and reasonably apportioned among properties that receive the special benefit.
- If a special benefit fails to meet the Florida case law requirements of special benefit and fair apportionment applicable to their imposition, then the charges imposed are taxes.

VI. Assessment, Tax, User Fees, Impact Fees

Assessments

- If a charge is a tax, it must be authorized by general law.
- Collection of the special assessment may be secured by a lien on the benefitted property, enforceable through foreclosure proceedings.
- Additionally, [Sec. 197.3632](#) provides for the collection of non-ad valorem assessments by including these assessment on the annual tax bill.
- Enforcement proceedings applicable to taxes are then available for the enforcement of assessments, including sale of tax certificates.



VI. Assessment, Tax, User Fees, Impact Fees

User Fees

Authorized by statute to be imposed directly by municipalities and charter counties and indirectly for non-charter counties through municipal service taxing or benefit units for various governmental purposes.

- User fees are payments for voluntarily purchased services which benefit the specific individual to the exclusion of non-feepayers.
- Florida Supreme Court struck down a transportation utility fee, stating that, in reality, the fee was a tax because it sought to charge for a general government service (maintenance of public roads).
- However, in 2001 the Court held that a mandatory reclaimed water “availability fee” was found not to be a tax, but a valid utility user fee even though the reclaimed water might not actually be utilized.

VI. Assessment, Tax, User Fees, Impact Fees

Impact Fees

- Fees imposed by local government to offset the cost of new development on existing facilities and are valid to the extent that the fees do not exceed a pro rata share of the reasonably anticipated costs of expansion, where expansion is reasonably required, and the use of the fees is limited to meeting the cost of expansion.
 - Local governments must show a reasonable connection between the need for additional capital facilities and the growth in the population generated by the development.
 - Local government must also demonstrate there is a reasonable connection between the expenditure of funds collected and the benefits accruing to the development.
 - Impact fees are generally imposed for water and sewer facilities, road facilities and parks and recreation facilities.
 - The Supreme Court has upheld impact fees for education facilities, however, they seem to retreat to a home rule power analysis, rather than comparing impact fees to user fees as in prior cases.
- Payments in Lieu of Taxes: Payments under a PILOT Agreement are imposed under proprietary powers of government, and not sovereign right and therefore are not invalid as taxes.

VII. Special Districts

- Uniform Special District Accountability act of 1989 governs creation, dissolution, meeting notices, reporting, elections and other requirements for special districts.
- “Special District” means a local unit of special purposes, as opposed to general purpose government, within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.
- The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.
- The term does not include school districts, a community college district, a special improvement district created pursuant to [Sect. 285.17](#), a municipal service taxing or benefit unit as specified in [Sect. 125.01](#), or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

VII. Special Districts

“Dependent Special District” means a special district that meets at least one of the following criteria:

1. The membership of its governing body is identical to that of the governing body of a single county or a single municipality;
2. All members of its governing body are appointed by the governing body of a single county or a single municipality;
3. During their unexpired terms, members of the special district’s governing body are subject to removal by the governing body of a single county or a single municipality; or
4. The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

VII. Special Districts

- “Independent Special District” means a special district that is not a dependent special district as defined before. A district that includes more than one county is an independent special district.
- Special districts are now required to maintain an official website. The information required to be accessible on their website is listed in Section [189.069](#), Florida Statutes. The agenda for a meeting and any available material for such meeting must be posed at least seven (7) days before the meeting.

VII. Special Districts

Bonds issued by special districts (other than Bonds approved by a referendum) must meet one of the following criteria:

1. The bonds were rated in one of the highest four ratings by a nationally recognized rating service;
2. The bonds were privately placed with or otherwise sold to accredited investors;
3. The bonds were backed by a letter of credit from a bank, savings and loan association, or other creditworthy guarantor, or by bond insurance, guaranteeing payment of principal and interest on the bonds; or
4. The bonds were accompanied by an independent financial advisory opinion stating that estimates of debt service coverage and probability of debt repayment are reasonable, which opinion was provided by an independent financial advisory, consulting, or accounting firm registered where professional registration is required by law and which is in good standing with the State and in conformance with all applicable professional standards for such opinions.

VIII. Investment Policies and Procedures

- Several legal documents may control the investment of funds by cities, counties and other local governments.
- There is specific statutory authority for
 - Counties ([Chapter 125](#), Florida Statutes);
 - Cities ([Chapter 166, Part III](#), Florida Statutes);
 - School Boards ([Chapter 1011](#), Florida Statutes); and
 - Special Districts ([Chapter 218](#), Part III, Florida Statutes).
- Additionally, Sect. 218.415 limits the types of investments which may be used for the investment of surplus funds of local governments to certain investments listed in the statute.

VIII. Investment Policies and Procedures

- Local Government cannot invest in any investment other than the listed investments unless the local government has adopted a formal written investment policy, which is required to place primary priority on the safety and liquidity of funds and secondary priority on the optimization of investment returns.
- Investments in derivative financial products must be specifically authorized and may be considered only if the chief financial officer has developed sufficient understanding of the derivative products and has the expertise to manage them. The use of reverse repurchase agreements or other forms of leveraged investments shall be prohibited or limited to transactions where the proceeds are intended to provide liquidity and for which the unit of local government has sufficient resources and expertise.

IX. Disclosure

- Bonds of a local government which are publicly sold (by competitive bid or negotiated sale) are typically sold by an underwriter using a disclosure document (usually an “official statement”).
- The official statement includes a description of the terms of the bonds, the security for the bonds and financial information about the issuer and the source of payment (water and sewer revenues, sales tax, ad valorem taxes, etc.).
- The official statement speaks only as of its date and must be complete and accurate as of its date to comply with the antifraud provisions of the federal securities laws.
- In November 1994, the SEC released amendments (the “Amendments”) to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (the “Rule”) which effectively requires issuers to commit to continuing disclosure as a condition to access the public bond markets.
- In July 2009, May 2010 and October 2018, pursuant to Release No. 34-59062, and in May 2010, pursuant to Release No. 34-62184, Release No. 34-62184 and Release 34-83885, respectively, the SEC adopted additional amendments to the Rule.

IX. Disclosure

Key Elements of 1994 Amendments to Rule 15c2-12

- Except for certain exemptions, the Amendments require the issuer or other obligated person for which information is provided in the final official statement (either individually or in combination with other issuers or obligated persons) to covenant to provide both annual financial information (and audited financial statements, if available) and material event disclosure (the "Continuing Disclosure Undertaking").
- As a practical matter, if neither the issuer nor an obligated person agree to the required Continuing Disclosure Undertaking, the offering will be effectively shut out of the municipal securities market under the Rule, unless the issue qualifies for one of the exemptions.

IX. Disclosure

Key Elements of 1994 Amendments to Rule 15c2-12

“Obligated Persons”

- The Continuing Disclosure Undertaking is required of the issuer or other obligated person for whom information is provided in the final official statement.
- An "obligated person" is defined to mean a person who is either generally, or through an enterprise fund or account of such person, committed by contract or other arrangement to support payment of all or part of the obligations on municipal securities, other than providers of municipal bond insurance, letters of credit or other liquidity facilities.
- An entity may be an obligated person even though it has no direct contract with bondholders. For example, the obligations supported by the obligated person can be obligations which run only to the issuer, such as a lease, loan agreement or other conduit structure or purchase agreement, a take-or-pay contract, or other contract or arrangement structured to support payment of the obligations relating to the municipal securities.

IX. Disclosure

Key Elements of 1994 Amendments to Rule 15c2-12

- Annual Information
 - Includes annual financial information for each obligated person for whom financial information or operating data was included in the final official statement and, if not submitted with the annual financial information, includes annual audited financial statements if and when available.
 - Must be filed. The timing is not prescribed in the Rule; it is set forth in the undertaking.
- Failure Notice
 - The issuer or obligated person must make certain notifications in the event the required annual financial information is not provided on or before the date required in the written undertaking.

IX. Disclosure

Summary of the Key Elements of the 2009 Amendments

The Commission, pursuant to Release No. 34-59062 adopted amendments to the Rule in connection with the adoption and implementation of the MSRB's EMMA system for municipal securities disclosures. In brief, the new amendments provide for the electronic submission of continuing disclosure documents, in a specified format and accompanied by specified identifying information, to the MSRB alone, and no longer to the NRMSIRs. All references to NRMSIRs and SIDs have been deleted from the Rule. Access to the Electronic Municipal Market Access ("EMMA") system is free to the public, although there is an optional subscription to a fee-based real-time data stream.

IX. Disclosure

Key Elements of 2009 Amendments - MSRB as Repository

- The MSRB is now the only repository referenced in the Rule. Submissions must be made electronically and accompanied by certain identifying information. The amendments will also require that the underwriter reasonably determine that the issuer or obligated person has undertaken in writing to accompany continuing disclosure documents submitted to the MSRB with identifying information as prescribed by the MSRB.
- No changes were made to the exemptions in (d)(1) of the Rule by the 2009 Amendments – i.e., exemption for securities with denominations of \$100,000 or more AND limited offering to sophisticated investors, maturity of nine months or less, OR variable rate debt with put option with a frequency of at least every nine months.

IX. Disclosure

Key Elements of the 2010 Amendments

- Summary
 - The SEC, continuing with its current theme of improving the quality, timing and dissemination of disclosure in the municipal securities market, issued Release No. 34-62184 which provides for certain amendments to Rule 15c2-12.
- The amendments to the Rule affect the secondary market disclosure requirements of the Rule, which require brokers, dealers, and municipal securities dealers, prior to purchasing or selling municipal securities in connection with an offering, to reasonably determine that an issuer of such municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement, has undertaken in a written agreement to provide to the holders of such securities certain financial information and to report the occurrence or certain material events relating to the securities.

IX. Disclosure

Key Elements of the 2010 Amendments

- Timeframe for Submitting Event Notices
 - The SEC has modified the Rule to require a participating underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit notices of certain material events to the MSRB "in a timely manner not in excess of ten business days after the occurrence of the event," instead of just "in a timely manner," as the Rule previously provided. This amendment ties the ten business days to the occurrence of the specific event, as opposed to knowledge of such an event by the issuer or obligated person.
- Materiality Determinations
 - The SEC has deleted the condition in the Rule that presently provides that notices of all of the listed events need be made only "if material," and removed the materiality determination for certain events.

IX. Disclosure

Key Elements of the 2010 Amendments

- Event Notices Regarding Adverse Tax Events
 - The current Rule provides for an event disclosure for "adverse tax opinions or events affecting the tax-exempt status of the security," if material and the 2010 amendments to the Rule provide for certain other specific tax matters to be disclosed.
- Additional Events to be Disclosed
 - The amendments to the Rule also include four additional events that must be disclosed in an event notice.
 - These events include:
 - (1) tender offers;
 - (2) bankruptcy, insolvency, receivership or similar proceeding of the obligated person;
 - (3) the consummation of certain mergers, consolidations, or acquisitions; and
 - (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material.

IX. Disclosure

Additional and Voluntary Disclosures to the MSRB

The SEC has also given approval to the MSRB to accept additional types of filings on its Electronic Municipal Market Access (“EMMA”) website. Underwriters of municipal securities will be required to provide – and issuers will be able to provide voluntarily – information to assist investors and other market participants in assessing the availability of ongoing disclosures made by issuers through the EMMA website.

IX. Disclosure

Municipalities Continuing Disclosure Cooperation Initiative

- The SEC rolled out its Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative") which intended to address what the SEC views as potentially widespread violations of the federal securities law by municipal issuers and underwriters of municipal securities.
- Municipal issuers who may have made materially inaccurate statements in a final official statement regarding their prior compliance with their continuing obligations as described in Rule 15c2-12 were given the opportunity to self-report to the SEC to take advantage of the MCDC Initiative.
- The program was open for filings in 2014 and the self reporting period has now closed. Filings were not made public and the SEC is now entering into enforcement actions and settlements. Inquires can be directed to MCDCinquiries@SEC.gov.

IX. Disclosure

2019 Amendments

The 2019 Amendments, effective February 22, 2019, add two new events:

- Incurrence of financial obligation of the issuer or obligated person, if material (a “new obligation event”), or an amendment to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material (a “revised obligation event”); and
- A default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, which reflect financial difficulties (a “financial distress event”), (Note the lack of materiality standard in this event when compared to the description above.)

X. Post Issuance Compliance

- The IRS is pushing for heightened compliance practices by requiring issuers to certify on Form 8038 and Form 8038-G that they have written procedures in place to monitor and remediate any nonqualified tax-exempt bonds.
- In 2012, the IRS reported the results of a compliance check on governmental bond issuers. While a majority of issuers reported that they had written compliance procedures in place, the IRS found that fewer than 20% of issuers had implemented specific written procedures or ad hoc processes at the level the IRS deems appropriate.
- A compliance plan is intended to provide written procedures for handling matters that arise after issuance of bonds. The plan should detail record retention policies, private use monitoring, arbitrage rebate and yield restriction, expenditure of bond proceeds, remedial actions and other issues that may arise over the life of a bond issue.

X. Post Issuance Compliance



Publication 5005

In 2019, the IRS released its Publication 5005, "Your Responsibilities as a Conduit Issuer of Tax-Exempt Bonds," which provides an overview for state and local governments of the responsibilities of conduit issuers with respect to tax compliance in municipal financing arrangements, commonly known as conduit financings. Because the conduit issuer is treated as a "taxpayer" for federal tax purposes and procedures, the issuer is the party generally responsible for tax compliance. However, the bond documents generally provide for delegation of certain responsibilities to the conduit borrower.

X. Post Issuance Compliance

Publication 5005 lists several items the IRS suggests that issuers consider when developing such post-issuance compliance procedures:

- Designating a particular conduit issuer official to assist in post-issuance compliance;
- Requiring conduit borrowers to identify a particular official responsible for assisting the issuer with post-issuance compliance monitoring;
- Providing training or other technical support to designated official(s) of the conduit issuer and conduit borrower.
- Requiring the conduit borrower to demonstrate that it has adopted written post-issuance compliance monitoring procedures before the approval of a bond issue;
- Designating time intervals within which compliance monitoring activities will be completed by the issuer and borrower;
- Timely completing remedial actions to correct or otherwise resolve identified noncompliance; and
- Requiring conduit borrowers to notify the conduit issuer of the completion of post-issuance compliance monitoring activities.

X. Post Issuance Compliance

Summary

- Local government issuers of tax-exempt bonds should have in place compliance programs to monitor and document activities post issuance.
- This encourages the prevention of problems and timely remediation, should a problem arise.

XI. Municipal Bankruptcies

Florida Law

- Florida conditionally authorizes municipal bankruptcies.
- Section 218.01, Florida Statutes, is the authorizing authority for the bankruptcy laws "for the benefit and relief of municipalities, taxing districts and political subdivisions."
- States cannot file for bankruptcy(sov​ereign).

Federal Law

- Chapter 9 of the Federal Bankruptcy Code provides for financial reorganization.
- Purpose of filing to provide financially distressed governments protection from creditors while reorganizing to become fiscally stable.

XI. Municipal Bankruptcies

Chapter 9 Eligibility:

- The municipality must have specific authority to file for Chapter 9 bankruptcy from the state;
- The municipality must be insolvent;
- The municipality must prove its desire to adopt a plan to adjust its debt;
- The municipality must satisfy at least one of four specified conditions to demonstrate that it has obtained or tried to obtain an agreement with its creditors, that it is not feasible to negotiate with its creditors holding at least the majority of the claims in each class that the entity intends to impair under its debt adjustment plan, or that it has reason to believe its creditors might attempt to obtain preferential payment or transfer of the entity's assets; and
- The municipality must show that it has filed for bankruptcy in good faith.

Resources

- [Online Sunshine](#)
- [EMMA](#)
- [IRS: Post-Issuance Compliance](#)
- [SEC: Municipalities Continuing Disclosure Cooperation Initiative](#)