



ABCs OF BORROWING FOR SCHOOL CONSTRUCTION

**Rhode Island General Treasurer's Office/
Rhode Island Health and Educational Building Corporation**

October 21, 2019 Municipal Training Session
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Agenda

- The Rhode Island Health and Educational Building Corporation Public School Bond Program
- School Building Authority Capital Fund
- Use of Capital Reserve Funds
- Relevant Law
- Pre-Issuance State Law Issues
- Pre-Issuance Securities Law Issues
- Pre-Issuance Tax Law Issues
- Establishment Clause
- Appendix - Definitions

RIHEBC Public School Bond Program

- The Rhode Island Health and Educational Building Corporation is a quasi-public corporation of the State created for the purpose of financing health and educational facilities. In response to the general assembly's legislative mandate in 2006, RIHEBC has set up a public schools financing program.
- After the Municipal approvals are in place, the municipality must file an application for bond financing with RIHEBC.
- RIHEBC assists the municipality or school district, if needed, to secure a Financial Advisor. Bond Counsel will be appointed by RIHEBC with input from the municipality/school district. Bond Counsel must be one of the 10 firms on RIHEBC's approved list.

RIHEBC Public School Bond Program

- RIHEBC's financial advisor undertakes a credit review. Assuming that the credit review is favorable, the RIHEBC board gives preliminary approval to the financing.
- RIHEBC selects an underwriter or underwriting group through an RFP process (or occasionally will select bank to purchase bonds through a private placement).
- RIHEBC directs bond counsel to draft RIHEBC Financing documents.
- At the following month's RIHEBC board meeting - transaction has been fully structured and the RIHEBC board grants final approval and passes an authorizing resolution.

RIHEBC Public School Bond Program

- After final approval, the working group circulates a Preliminary Official Statement.
- After the bond documents and Preliminary Official Statement are drafted, they are sent to credit rating agencies and bond insurers for review.
- The rating agencies and bond insurers have questions and comments.
- Bond counsel and the financial advisor address the legal and financial issues presented by such questions or comments.
- The Preliminary Official Statement is mailed to investors.

RIHEBC Public School Bond Program

- RIHEBC standard Financing Agreement requires municipality to make gross debt service payments to RIHEBC via the Bond Trustee.
- RIHEBC holds funds in the Borrower payment account with interest accruing to the benefit of the Municipality.
- RIDE pays state housing aid payments directly to RIHEBC twice per year in equal installments (April and October).
- RIHEBC retains the excess state aid paid in October in an interest bearing account pending April debt service payment, with interest accruing to the benefit of the State.
- After the April debt service payment of principal and semiannual interest, RIHEBC remits the excess to the State.

RIHEBC Public School Bond Program

- Bonds are priced pursuant to a Bond Purchase Agreement with the underwriter. After pricing, the Bond Counsel drafts and coordinates execution of the Bonds and closing documents and opinions.
- The Final Official Statement is completed.
- RIHEBC holds the construction funds in an interest bearing account with interest accruing to the benefit of the municipality and subject to requisition by the municipality. Interest is applied to debt service.
- The municipality issues a bond to RIHEBC. RIHEBC issues a publicly offered bond, which, in turn, is secured by the municipality's (or regional school district's) bond.
- Interest on RIHEBC's bonds is payable semiannually on May 15 and November 15.
- The municipality's/school district's debt service payments are due 45 days in advance by April 1 and October 1.

RIHEBC Public School Bond Program

State Housing Aid

- Pursuant to RI General Laws §16-7-35 to 16-7-47, as amended (the “School Aid Act”), the State provides construction aid to Rhode Island municipalities and regional school districts for the cost of building or renovating public schools.
- All buildings constructed or renovated since July 1, 1949 are eligible for assistance to a minimum of 35% of the full cost of such buildings.
- For projects approved after June 30, 2003, the cost of interest on any bond will be reimbursed as an eligible project cost only if the bonds for these projects are issued through RIHEBC.

RIHEBC Public School Bond Program

- Principal is reimbursable irrespective of whether the bonds are issued through RIHEBC or not.
- Statute provides that housing aid reimbursement rate will remain constant for the life of the bond issue.
- Technically (legally) the general assembly can change the reimbursement rate at any time.
- The School Aid Act authorizes intercept mechanism.
- The General Treasurer pays the State Housing Aid directly to RIHEBC or its Bond Trustee.

RIHEBC Public School Bond Program

- Upon the occurrence of an event of default (nonpayment of borrower bonds), State Housing Aid relating to other bonds of the municipality/school district may be intercepted and applied to the payment of the RIHEBC Bonds.

RIHEBC Public School Bond Program

- The School Aid Act has various restrictions.
- RIHEBC's costs of issuance are reimbursable as project costs for housing aid purposes.
- Cost of issuance incurred by municipalities are not.
- State Housing Aid only applies to projects at school facilities under the care and control of a school committee and located on school property.

RIHEBC Public School Bond

Program - Disqualifiers

- Facilities with combined school and municipal uses or facilities that are operated jointly with any other profit or non-profit agency do not qualify for State Housing Aid.
- In the event that a facility:
 - (i) ceases to be under the care and control of a school committee,
 - (ii) is located on property which ceases to be school property,
 - (iii) becomes a facility with joint school and municipal uses, or
 - (iv) becomes jointly operated with a profit or non-profit agency.

RIHEBC Public School Bond

Program - Disqualifiers

- A project will no longer qualify for State Housing Aid and payments of State Housing Aid in respect to such project will be discontinued.
- RIDE will not reimburse capitalized interest on bonds or notes.

RIHEBC Public School Bond Program

Basic Education Aid (Operations) Intercept

- In June 2012, the General Assembly amended Section 16-7-41 of the State Aid Act to provide that in the event a municipality or school district fails to pay amounts due to RIHEBC, the General Treasurer shall also intercept basic education aid in addition to School Housing Aid to pay debt service.
- Municipality/school district debt service payment due to RIHEBC/Trustee (due October 1 and April 1 – 45 days before RIHEBC's debt service payment is due).

RIHEBC Public School Bond Program

- Legislation was enacted in 2007 which requires that effective January 1, 2008, the issuance of bonds by a school construction project requires passage of an act by the general assembly.
- Therefore, if you are a town that authorized debt through a Financial Town Meeting, you must also get an act from general assembly stating that project is eligible for state aid reimbursement.
- This requirement does not apply to refunding bonds or borrowings from the School Building Authority Capital Fund.

School Building Authority Capital Fund

- Administered by RIHEBC
- May be a grant or require the municipality or school district to issue a bond
- May be a combination grant/loan
- Need bond authorization for full principal amount as grant must be paid back if municipality does meet state spending requirements (these are different than tax law spending requirements)

School Building Authority Capital Fund

Example: \$2.0 School Project

\$2.0 million total borrower bond

\$1.6 million to be paid from state aid grant, and
\$400,00 remaining borrower bond to be paid by
municipality.

If spending deadlines not met, municipality does not receive grant and entire \$2 million must be repaid. Therefore, municipality needs state law authority to borrow \$2.0 million, not \$400,000.

School Building Authority Capital Fund

- Simple documentation
- Source of funds—funds appropriated by the General Assembly for school housing aid which is not used during a fiscal year.
- Borrower Bond is taxable (so no tax issues)

Use of Capital Reserve Funds

No need to issue bonds

Use pay-as-you-go capital

Receive State Housing Aid reimbursement at current housing aid reimbursement rate

MUST be placed in Capital Reserve Fund

RIDE will not reimburse amounts paid from School General Fund

Relevant Law

- Tax-exempt financing involves the interplay of:
- State Law
- Securities Law
- Tax Law
- Proceedings Authorizing Debt
- Contact municipality's/school district's Bond Counsel for assistance in drafting authorizing proceedings. If you didn't have Bond Counsel, RIHEBC can assist.
- Bond Act – special legislation adopted by general assembly, subject to voter approval.
- Section 45-12-2 of the Rhode Island General Laws (the 3% Debt Limit Statute) coupled with municipal charter.
- Ministerial Approval – Section 45-12-2.1 – only used once since adopted.

Pre-Issuance State Law Issues

Ensure that all procedural aspects of authorization satisfied

- a) notice requirements
- b) meeting requirements
- c) vote requirements

Vote Approving Issuance

- a) purpose - needed to approve sale and terms of bond issue.
- b) towns – Financial Town Meeting or Town Council; cities – City Council; regional school districts – regional school district school committee.
- c) originally certified copies of proceedings. provide to bond counsel all applicable local governing documents (charter, bylaws, ordinances, etc.)

Information regarding Project

- a) description of project to confirm authority under state law
- b) project information affecting term/amortization of debt
- c) information regarding other funds for project

Pre-Issuance State Law Issues

Bonds

- purpose – evidence the debt and terms of repayment
- creates enforceable legal obligation to make future payments

Confirmation within Applicable Debt Limit

Financial Advisor usually helps prepare.

If you do not have Financial Advisor, RIHEBC can assist in selection.

Pre-Issuance Securities Law Issues

Preliminary Official Statement.

- purpose – market bonds/satisfy legal requirements for publicly offered bonds. Information regarding terms of sale, legal security for bonds, issuer.
- Generally prepared by Financial Advisor.

**recommendation: review carefully; involve appropriate muni officials

- Securities and Exchange Commission Anti-fraud requirement
- SEC Rule 10b-5 – municipal securities disclosure must contain no untrue statement of material fact, no omissions of material facts necessary to make statements not misleading
- Recently, the SEC has brought enforcement actions against municipal officials in their individual capacity

Pre-Issuance Securities Law Issues

- Does the offering material contain any misleading information?
- Does the offering material omit any material information about the issuer?
- Does the offering material otherwise fairly represent the credit of the issuer?
- Post-Issuance Securities Law and Tax Law Compliance addressed by another panel.

Establishment Clause

Tax-Exempt bond proceeds may not be used in connection with the “establishment of religion.”

- Not a tax issue, although it normally comes up in tax diligence.
- Review uses by churches and religious organizations.
- Apply similar tests to private use test.
- Use for fellowship is fine, but worship services may be a problem.

Appendix - Definitions

APPROPRIATION OBLIGATION – Financing Lease or other arrangement that is subject to annual appropriation of funds. Appropriation obligations are not legally considered “debt” and are not subject to voter approval requirements.

ARBITRAGE – With respect to the issuance of municipal securities, arbitrage usually refers to the difference between the interest paid on tax-exempt bonds and the interest earned by investing the proceeds of the tax-exempt bonds in higher-yielding taxable securities. Federal income tax laws generally restrict the ability to earn arbitrage in connection with tax-exempt bonds.

ARBITRAGE REBATE – A payment made by an issuer to the federal government in connection with an issue of tax-exempt bonds. An issuer generally is required to calculate, once every five years during the life of its bonds, whether or not an arbitrage rebate payment must be made.

Appendix - Definitions

BOND COUNSEL – An attorney or law firm retained, typically by the issuer, to give the traditional bond counsel opinion. Such opinion customarily opines that the bonds have been validly issued and, if tax exemption is intended, that the bonds are tax-exempt bonds.

BONDS – A bond is written evidence of the Issuer's obligation to repay money it has borrowed with interest at specified rates and maturity dates.

BOND ANTICIPATION NOTES (“BANs”) – Short-term financing, in the form of temporary notes, before bonds are issued so that money is available for projects needing immediate funding. BANs typically mature in a year or less.

FINANCIAL ADVISOR – An individual or firm that advises the issuer on matters pertinent to the issue, such as structure, timing, marketing, fairness of pricing, terms and bond ratings.

Appendix - Definitions

GENERAL OBLIGATION BOND – A general obligation bond is a bond which is secured by the full faith and credit and taxing power of the Issuer.

ISSUER – A state, territory, political subdivision, municipality, or governmental agency or authority that raises funds through the sale of municipal securities.

ISSUING BONDS – To “issue” bonds means to sell, deliver, and receive payment for bonds. The State generally issues bonds for particular projects upon determining the amount of cash necessary to implement such projects.

Appendix - Definitions

REFERENDUM – A referendum is the way a legislative body (the General Assembly or town or city council) asks voters to make those decisions on proposals such as long-term borrowings like bonds and special laws affecting some cities and towns. The referendum is always asked as a question for voters to approve or reject. Referenda is the plural form of the word referendum.

REFUNDING BONDS -- Sometimes, after bonds have been issued, interest rates fall and make it cheaper to refinance existing debt. When that is the case, the municipality may approve the issuance of refunding bonds. This means that the Issuer can refinance existing bonds at lower interest rates by calling in and paying off the existing bonds.

Underwriter – A municipal securities dealer that purchases an issue of municipal securities from an issuer for resale to the public.



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KAREN S. D. GRANDE (Partner; Syracuse University, A.B.; Suffolk University Law School, J.D.). Karen has practiced in Public Finance since 1988. She concentrates her practice in the area of revenue bonds and general obligation bonds and regularly handles state law issues relating to the issuance of bonds. She has served as bond counsel or underwriter's counsel on many student loan bonds issued in Rhode Island since 1996. Karen has served as bond counsel to 23 of Rhode Island's 39 cities and towns (including the state's largest cities: Providence, Cranston, Pawtucket and Newport) as well as to many state and municipal agencies that finance public projects, including school projects, public water supply and wastewater projects, recreational facilities and economic development projects.

In addition, over her career, Karen has served as bond counsel to the R.I. Health and Educational Building Corporation, the R.I. Economic Development Corporation (predecessor to the Rhode Island Commerce Corporation), the R.I. Industrial Facilities Corporation, the R.I. Turnpike and Bridge Authority, the Narragansett Bay Commission, the Kent County Water Authority, and R.I. Water Resources Board, Corporate.

Karen served as special municipal counsel to the Rhode Island Department of Administration in connection with the landmark Chapter 9 bankruptcy filing of Central Falls, Rhode Island. She drafted the nationally recognized Rhode Island Fiscal Stability Act and Statutory Lien Legislation and has become a frequent speaker and author on the subject of Chapter 9 bankruptcy and municipal distress.

She has made presentations sponsored by the State Department of Revenue, Division of Municipal Finance to municipalities regarding tax and securities law compliance and was featured in video entitled “Bankruptcy Aftermath” presented by The Bond Buyer. She co-authored a chapter regarding municipal bankruptcy in the American Bar Association’s Municipal Law Deskbook published in 2015 and authored a chapter entitled “Understanding and Responding to Constant change in Public Finance Policies and Regulations”, published in the Thomson Reuters publication “Inside the Minds: Navigating Public Finance Trends and Regulations.”

Karen has been a panelist at workshops sponsored by the National Association of Bond Lawyers (“NABL”). She is a member of the Rhode Island Government Finance Officers Association. She earned an AV-Preeminent rating and was endorsed for high ethical standing by Martindale-Hubbell with excellent Client Review Ratings that can be accessed on martindale.com. Karen has been listed in both The Best Lawyers in America in the area of Public Finance Law as well as a Rhode Island Super Lawyer by Thomson Reuters. In 2015, Ms. Grande was named the Best Lawyers' 2015 Providence Public Finance "Lawyer of the Year." Karen is also a Regular Fellow of the American College of Bond Counsel.