

County Government Bond Financing Review Form

Presented by: Mike Scroggins,
Director County Audit Division
Examiners of Public Accounts

Legal Authority

- SB393

Definition of Terms

- Bond Financing Agreement – An agreement or other document relating to the sale or issuance of bonds, including, but not limited to, a bond purchase agreement, a loan agreement, a refinancing agreement, or documents providing for bonds sold or issued on a competitive sale basis.

Definition of Terms

- Bonds - Bonds, bond anticipation notes, warrants, warrant anticipation notes, or indebtedness issued or entered into on behalf of the county or by the county commission for a term of at least three years or more.
- Capital Expenditure - Any cost or expense of a type that is properly chargeable to a capital account under general federal income tax principles.

Definition of Terms

- General Obligation Indebtedness - A bond financing agreement which, according to its terms, will be repaid from any funds at the disposal of the county commission.
- General Operating Expenses - Any expense incurred by a county in the general operation and function of the county. The term includes salaries and other associated expenses, but does not include a capital expenditure or expense.

Definition of Terms

- Limited Obligation Indebtedness - Bonds which, according to their terms, are required to be paid solely from the proceeds of a specific tax, fee, license, charge, or other specific revenue stream.

Definition of Terms

- Net Present Value Savings - The projected cost savings to the county from refinancing any bonds, by comparing the net present value of the costs of the bonds proposed for refunding, including the original costs of issuance and the payment of principal and interest on the bonds proposed for refunding, with the net present value of the costs of the proposed bonds, including the costs of issuance and refinancing and the payment of principal and interest on the proposed bonds.

Definition of Terms

- Swap Agreement - A swap agreement as defined in Article 3 of Chapter 1 of Title 41, Code of Alabama 1975.

Requirements of Act

- Notwithstanding any other provision of law, after the effective date of this act, no county commission may enter into any bond financing agreement or other transaction related to establishing bonded indebtedness that constitutes or creates an obligation, debt, or charge against the credit or taxing power of the county until and unless the county has satisfied the requirements of this act.

Requirements of Act

- In addition to any and all other documents presented for examination and execution of a bond financing agreement which, for the purposes of this act, takes place at the time a county commission makes an official award of the bonds, the county commission shall execute a County Government Bond Financing Review Form.

County Government Bond Financing Review Form

- The standard review form shall be prepared by the Office of Examiners of Public Accounts and shall include statements to the effect that:
 - (1) The county commission has considered whether it can satisfy its financial obligations for the life of the bonds.
 - (2) In the case of limited obligation indebtedness, the county commission has identified the source for the debt service payments for the life of the bonds and, in the case of general obligation indebtedness, the county commission has indicated that the full faith and credit of the county has been pledged for the debt service payments for the life of the bonds.

County Government Bond Financing Review Form

- (3) The county commission has considered the period of usefulness of the improvement or property for which the bonds are to be issued in light of the duration of the term of the bonds under the bond financing agreement.
- (4) The county commission acknowledges that bond proceeds shall not be used for general operating expenses of the county.

County Government Bond Financing Review Form

- (5) The county commission has received from the bond underwriter, bond counsel, issuer's counsel, trustee, and any others associated with the issuance of bonds an itemized listing of their respective fees and all other costs which shall not be subject to change prior to the sale or issuance of bonds.
- (6) The county commission has received from the bond underwriter a clear and understandable written proposal explaining all details of the proposed bond issue, its repayment schedule, and any external factors which could affect the total cost to the county if it issues the bonds.

County Government Bond Financing Review Form

- (7) The county commission has considered the effect, if any, that the bonds will have on the county's constitutional debt limit.
- (8) The county commission has received from the bond underwriter information demonstrating that the estimated interest rate on the bonds is reasonable and, that if information regarding similar recent issuances is available, the interest rates are comparable with other similar issuances based on current bond market conditions on the date of execution of the bond financing agreement.

County Government Bond Financing Review Form

- (b) If the proceeds of the proposed bonds are to be used in whole or in part for the purpose of refinancing or refunding outstanding bonds, the County Government Bond Financing Review Form shall also include statements to the effect that:
 - (1) The county commission understands how the issuance of refunding bonds may extend the county's initial debt repayment period and the total cost paid by the county by the end of the refunding period.

County Government Bond Financing Review Form

- (2) The county commission has considered whether the refunding bonds will create net present value savings for the county, including the costs of refinancing.
- (c) In connection with a swap agreement, the County Government Bond Financing Review Form shall include statements to the effect that:
 - (1) The county commission has complied with paragraph a. of subdivision (2) of Section 41-1-42, Code of Alabama 1975.
 - (2) The county commission has reviewed or had explained by the adviser selected as provided in Section 5 all documentation provided pertaining to the swap agreement as required in subsection (d).

Paragraph a. of subdivision (2) of Section 41-1-42, Code of Alabama 1975

- (2) No governmental entity shall enter into any swap agreement unless all of the following occur:
- a. The governmental entity's governing body first finds and determines, and certifies to the counterparty, that the swap agreement is entered into for the purpose of hedging against an interest rate, investment, payment, or other similar risk that arises in connection with or incidental to the proper activities of the governmental entity.

County Government Bond Financing Review Form

- (3) The county commission has designated an employee or official who will have primary responsibility for the consideration, execution, and monitoring of interest rate swaps and financial hedges entered into by the county.
- (4) The county commission has determined whether the county's obligations under the swap agreement constitute a general obligation indebtedness of the county and whether the source of payment is sufficient.

County Government Bond Financing Review Form

- (5) The county commission has sought and received specific information disclosing the potential risks inherent in the swap agreement including those risks commonly referred to in the derivatives industry as "basis risk," "tax risk," "interest rate risk," "counterparty risk," "termination risk," "market-access risk," "rollover or anticipation risk," and "credit risk."

Definitions of Types of Risks

- Basis Risk – risk present when variable interest rates are based on different indexes (i.e LIBOR, KIBOR, & BMA).
- Tax Risk - the risk that tax laws will change, resulting in a change in the marginal tax rates on swaps and their underlying assets. This risk is present in all tax-exempt debt issuances.
- Interest Rate Risk – the risk that changes in interest rates will adversely affect the values of the entity's financial instruments or cash flows.

Definitions of Types of Risks

- Counterparty Risk – the risk to each party of a contract that the counterparty will not live up to its contractual obligations.
- Termination Risk – the risk that the agreement's unscheduled end will present the entity with potentially significant unscheduled termination payments to the counterparty.

Definitions of Types of Risks

- Market-Access Risk – is the risk that a government will not be able to enter credit markets or that credit will become more costly.
- Rollover Risk – is the risk that the agreement associated with the governments debt does not extend to the maturity of the debt.

Definitions of Types of Risks

- Credit Risk – is the risk that the counterparty will not fulfill its obligations

County Government Bond Financing Review Form

- (d) The County Government Bond Financing Review Form shall also include a statement acknowledging that all enumerated items on the review form have been considered by the county commission, and that the county commission has voted to enter into the bond financing agreement or swap agreement by an affirmative vote of a majority of the members of the county commission. The statement of acknowledgment shall be signed by the chair of the county commission or another commission member designated by the county commission and the adviser or consultant utilized by the county commission pursuant to Section 5.

County Government Bond Financing Review Form

- (e) A copy of the County Government Bond Financing Review Form shall be forwarded to the Office of Examiners of Public Accounts within 10 business days of the issuance of the bonds or swap agreement. All County Government Bond Financing Review forms shall be kept on file at the Office of Examiners of Public Accounts and shall be available for public inspection for a period of seven years.

County Government Bond Financing Review Form

- (a) In addition to the requirements of Section 3, the bond financing agreement documents shall include a detailed itemization of the costs and fees which will be paid directly by the county commission or from bond proceeds under the bond financing agreement. This itemization shall include a statement acknowledging that the amounts of these costs and fees have been presented and explained to all members of the county commission prior to the sale of bonds. The acknowledgement statement shall be signed by the chair of the county commission or another commission member designated by the county commission and by the authorized signatory for the bond underwriter.

County Government Bond Financing Review Form

- (b) In connection with a swap agreement, the documentation necessary to effectuate the swap agreement shall also include a statement from the authorized signatory for the bond underwriter or authorized signatory of the provider of the swap agreement to the effect that:
 - (1) It has provided the county commission with a disclosure of the potential risks inherent in the swap agreement.
 - (2) It has disclosed all fees associated with the swap agreement.

County Government Bond Financing Review Form

- (3) It has provided the county commission with documentation necessary to effectuate the swap agreement including master agreements, schedules, credit support annexes, confirmations, legal opinions, fairness opinions, and any other information necessary to comply with subdivisions (3) and (5) of subsection (c) of Section 3.

County Government Bond Financing Review Form

- In preparing the County Government Bond Financing Review Form, the county commission shall consult with and obtain advice from either an attorney for the county, the county administrator, or, at the option of the county commission, a certified public accountant regarding any and all bond or swap proposals received by the county. The person or persons utilized by the county commission for advice and consultation shall review all documents to be included at the execution of the bond financing agreement or swap agreement.

Effective Date

- This act shall become effective on October 1, 2009, following its passage and approval by the Governor, or its otherwise becoming law.