MAMA / GLS
Summer Education Conference

Coordinating Multiple Source Funding / Financing for a Major Public Infrastructure Project

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FEDERAL RESERVE NOTE
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Structuring Issues and Considerations

Initial Questions:

- What is the Timing?
- Who are the Parties Involved with the Project?
- Ownership – Who Owns What Now and Who Will Own What When it is Completed?
- What are the Sources of Funding?
- What are the Restrictions on the Funding Sources?

Timing

- **Project Timing**
  - When Start?
  - When Finish?
  - Stages of Construction?

- **When Do They Need the Money?**
  - Front End?
    - Land Acquisition, Condemnation Good Faith Offer
  - Stages of Construction?
    - Public Infrastructure First?
  - Back End?
    - Agreement to Pay/Buy on Completion
    - Delayed Billing
  - Timing of Grants/Other Sources
    - Cash Flow Issues?

Parties to the Project

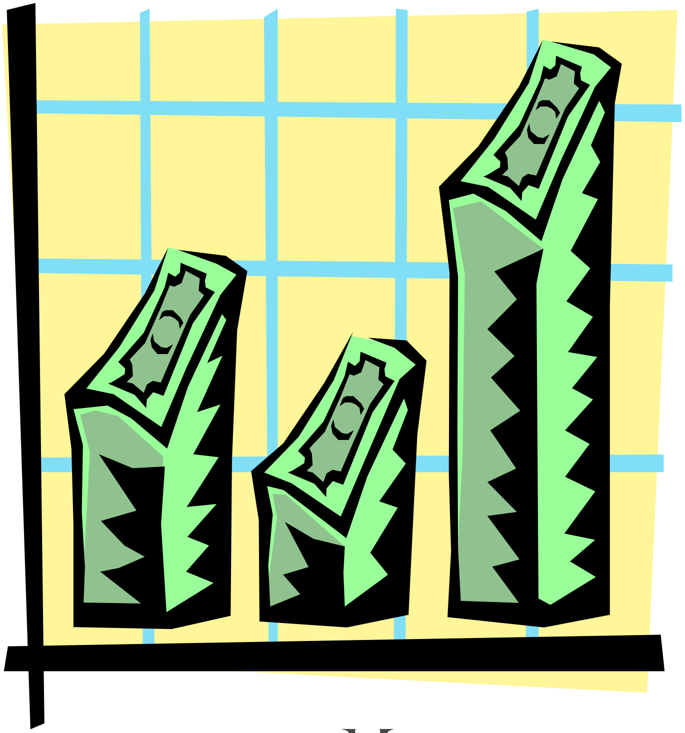
- Local Unit of Government
- Other Units of Government
  - County / Road Commission / Drain Commissioner
- Developer
- Current Property Owner
- State Agencies
  - MDOT, MEDC, MDEQ
- Federal Agencies
  - USDOT, EPA, USDA

Ownership

- Who Owns Property Now?
- Who Will Own Infrastructure / Development when Complete?
- Who will be responsible for maintenance?
- Condominium arrangements?
  - Parking structures
  - Buildings

Sources of Funding

- Local Government Cash or Bond Proceeds
  - Taxes
  - Water/Sewer Revenues
  - Tax Increment Revenues
  - Special Assessments
- Grant Funds
- MDOT/USDOT Funds
- Developer Contributions



Restrictions on Funding Sources

- Restrictions on Uses
  - Local Government Money Permitted Purposes
  - Bond Proceeds Restrictions (Tax-Exempt Limitations)
  - Grant Fund Purpose or Use Restrictions
- Requirements on Wages
  - Michigan Prevailing Wage Law repealed
  - Local Prevailing Wage Requirements
  - Federal Davis-Bacon Requirements
- Other Requirements and Restrictions
  - New American Iron and Steel requirements
  - Standard Federal funding requirements
    - Civil Rights Act, ADA, Age Discrimination Act, Limited English Proficiency (LEP), Marijuana Compliance Certification, Single Audit

Legal Documentation

- Development Agreement
- Funding or Joint Funding Agreements
- Intergovernmental Cooperation Agreements
- Preliminary and Final Title Opinion for USDA Rural Development Projects
- Construction Contracts
- Condominium / Real Estate Documents
- Operation and Maintenance Agreements or Management Contracts for Infrastructure/Buildings
- Bond Documents

Can we just <u>borrow</u> money from the bank? - No

- <u>Dillon's Rule</u>

A municipality may only exercise those powers expressly granted, necessarily implied, or which are essential — not simply convenient, but indispensable.

- <u>Revised Municipal Finance Act, Public Act 34 of 2001</u>

- [a] municipality shall not issue a municipal security except in accordance with this act."

- "Security" means "an evidence of debt such as a …contract, obligation…or other similar instrument issued by a municipality, which pledges payment of the debt by the municipality from an identified source of revenue."

How does a Municipality borrow money for its share of the cost?

1. Municipal Bonds
2. Installment Purchase Agreements

What isn't allowed:

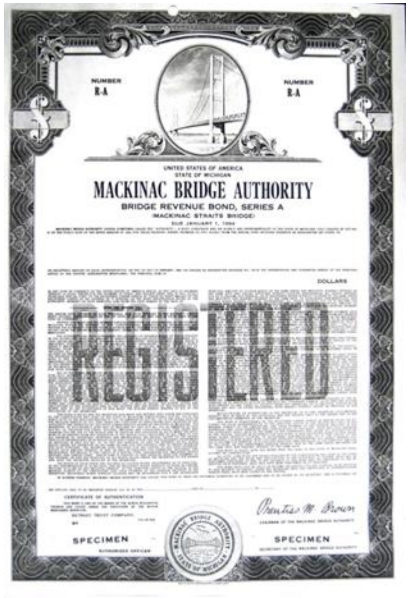
No Lines of Credit

No Mortgage Loans

No Bank loans

What is a Municipal Bond?

- A written promise to pay
- Issued by a state or local government
- Typically repaid over a period of 1 to 40 years
- May be tax-exempt to investors for certain public projects

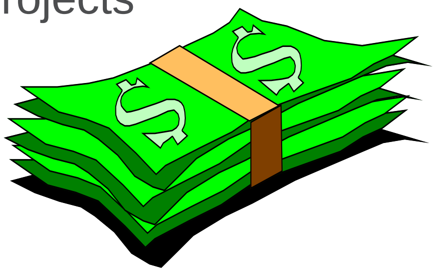


Who Buys the Bonds?

- The “Bond Market”
- Underwriters, Banks, institutional investors, Mom-and-Pop investors

- Local Banks

- State Revolving Fund Programs – Michigan Finance Authority
  - SRF Clean Water Fund – sanitary sewer projects
  - DWRF Drinking Water Revolving Fund – water projects
  - Local Government Loan Program



- Federal Agencies
  - USDA Rural Development Programs

Municipal Bonds – Different types for various needs

- Voted Unlimited Tax General Obligation Bonds
- Capital Improvement Bonds
- Special Assessment Bonds
- Revenue System Bonds
- Tax Increment Revenue Bonds
- Contract (Authority or County-issued) Bonds
- Cash Flow (Tax Anticipation) Notes
- Installment Purchase Contracts

Repayment Sources for Municipal Bonds

General Obligation Bonds:

- Backed by the full faith and credit taxing power of municipality
  - Limited tax (not voted)
  - Unlimited tax (voted)
- Municipality may use various sources of revenues to repay debt

Revenue Bonds:

- Paid by identified revenues, usually user rates, charges, fees, etc
- Not approved by voters
- Generally not considered a debt of the municipality's General Fund
- Often require the funding of a Debt Service Reserve Fund
- Usually require rate covenant or coverage ratios

Voted Unlimited Tax General Obligation Bonds

Public Act 116 of 1923

- Unlimited Tax
  - Voter approved
  - Levy debt millage at rate necessary to pay principal and interest on the bonds
  - Issued to finance roads, city hall, library, fire station or other public buildings

Capital Improvement Bonds

Public Act 34 of 2001 – Revised Municipal Finance Act

- Finance cost of any capital improvement item
- Limited tax
  - Cannot increase taxes above maximum rate
  - Paid from existing tax and/or revenue sources
  - Notice and referendum period
- Debt Limit: 5% of Municipality’s SEV

Revenue Bonds

Public Act 94 of 1933 – Revenue Bond Act

- Issued to finance self-supporting public improvements
  - Water and sewer systems
  - Garbage and refuse disposal facilities
  - Electric and gas utilities
  - Cable television systems
- Principal and interest on the bonds is paid from revenues of the system
- Generally not considered a debt of the Municipality's general fund
- Rates and charges must be set at an amount sufficient to pay at least 100% of operation, maintenance and debt service

County Issued Bonds

Mechanisms for Local Units of Government to finance certain improvements through County.

- County/Local Unit enter into contract
- County issues bonds to acquire and construct public improvement
- LUG pays county semi-annually pursuant to contract; county in turn pays principal and interest on the bonds

Public Act 185 of 1957 – County Department and Board of Public Works Act

Public Act 342 of 1939 – County Public Improvement Act

Public Act 40 of 1956 – The Drain Code of 1956

Authority Issued Bonds

Act 233 of 1955 – Municipal Sewage and Water Supply Systems

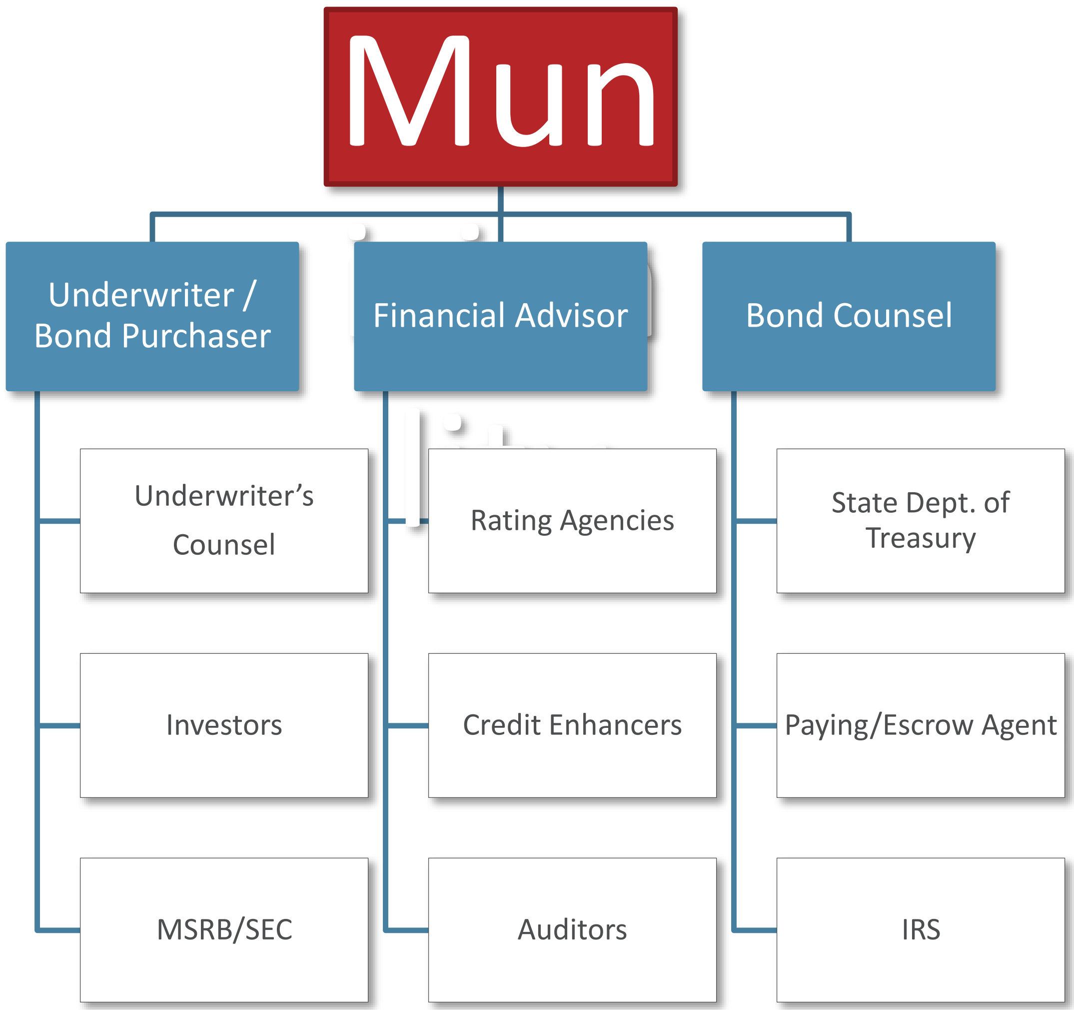
- Two or more local units create a municipal authority to own or finance sewage disposal systems, water supply systems and solid waste management systems
- Authority/Local Unit enter into contract
- Authority issues bonds to acquire and construct project
- Local Unit pledges limited tax full faith and credit; Local Unit pays Authority semi-annually pursuant to contract; Authority pays principal and interest on bonds
- Authority may also issue Act 94 Revenue Bonds

Installment Purchase Contracts

Public Act 99 of 1933 – Purchase of Lands and Property for Public Purposes Act

- Financing Real or Personal Property
  - Real Property
    - Land or Buildings
  - Personal Property
    - Fire trucks, police cars, water meters, copy machines, or other equipment
- No notices or referendum required
- Maximum term of 15 years for city, village or township
- Maximum term of 10 years for counties
- Debt limit: 1 ¼% of Issuer's taxable value

Finance Team Participants



Types of Bond Sales

Competitive

- Sold at a specific date and time – legal notice of sale required 7 days prior to sale
- Any firm or person may bid on bond offering
- Bonds awarded to the lowest conforming bid

Negotiated

- Underwriter pre-selected (may be through an RFP process)
- Underwriter offers bonds for sale to investors
- Flexibility in timing of sale and terms of sale

Private Placement

- Bonds are sold directly to bank/private investor or bank
- Terms are negotiated with the bank/investor

Other Bond Financing Considerations

- Reimbursement from Bond Proceeds
  - Can reimburse from for expenditures made prior to bond issuance if governmental entity declares intent within 60 days after incurring expenditure
- Timing of Bond Issuance
  - Good to wait until costs and obligations are Certain, if possible
- Taxable or Tax-Exempt Financing
  - Tax-exempt is lower interest cost
  - More flexibility on use with taxable financing

Federal Tax Concerns – Private Use

Private Use/Change in Use

- The tax exemption on bonds depends upon the use of the assets that are bond-financed
- No private business use arrangement with private entity beyond permitted *de minimis* amount (e.g. ownership, leases, management contracts, other beneficial use arrangements)
- Private business use means use in a trade or business carried on by any person other than an exempt entity for its exempt purpose
- An exempt entity is any state or local governmental entity (501(c)(3) entities are <u>not</u> exempt entities)
- Exceptions
  - General Public Use
  - Short Term Use
  - Incidental Use
  - Safe Harbors – Management Contracts

Questions? Thank you!

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