NEW STATE LEGISLATION PROVIDES FINANCIAL FLEXIBILITY TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS

Hodgson Russ Bond Counsel Alert
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The State of New York and its included local governments and school districts have been severely impacted by the COVID-19 pandemic. In response, Governor Cuomo recently signed legislation that will grant these public entities some **helpful additional financial flexibility** as they deal with the fallout.

Bond Anticipation Notes "Extension"

Generally, school districts, municipalities, and fire districts in New York State may only pursue short-term financings (through the issuance of bond anticipation notes) for up to **five years**. After that, such notes must be either fully paid off or converted to long-term bonds.

Under the new legislation, bond anticipation notes originally issued during 2015-2021 will be allowed to be renewed for a maximum of **seven years**, giving school districts, municipalities, and fire districts an **additional two years** to remain in short-term financing before going to bonds. This will give issuers more flexibility in timing their bond issues, and will avoid a situation in which an issuer is forced to issue long-term bonds into a particularly turbulent or unfavorable market.

<u>Note that this does not mean that all issues can be renewed for seven years, however</u>. Under the Local Finance Law, the length of any borrowing is capped based on the purpose for which such funds will be used, and this new legislation does not change the existing caps. So, if the Local Finance Law specifies that a purpose can only be financed for five years or less, this new legislation would not provide an extension.

For example, while school districts can finance school construction for up to 30 years, buses can only be financed for up to five years. Therefore, school construction projects that were originally financed between 2015 and 2021 can now remain in short-term financing for seven years, but financing for school buses can still only go out only for the traditional five years.

We have seen this type of legislation before, first in response to the events of September 11 and then in response to the 2008-2009 financial crisis. Recognizing that the timing of bond issues is important in the management of local debt service costs, the State does not want to force local governments to put their bonds out into

Attorneys

John Alessi
Christopher Canada
George Cregg
Christofer Fattey
A. Joseph Scott III
Jeffrey Stone
Marla Waiss

Practices & Industries

Bond Counsel

particularly unfavorable markets that have been severely disrupted by unusual outside events. Also, because short-term note borrowings typically carry lower interest costs than bond issues, some immediate fiscal relief can be realized until economic conditions stabilize.

Please contact your municipal advisor or bond counsel to determine if any of your projects are now eligible to stay in short-term note financing for a period longer than what may have been planned at the outset.

Use of a Capital Reserve Fund for COVID-Related Capital Costs

Generally, school districts and fire districts in New York State need to obtain voter approval for the expenditure of funds from a capital reserve fund, and such expenditures in municipalities may be subject to permissive referendum.

The new legislation waives the typical mandatory or permissive referendum requirements for expenditures from a capital reserve fund for **capital costs** attributable to the pandemic. Instead, only a resolution of the governing board is required, and such resolution is not subject to permissive referendum.

Use of Any Reserve Fund for COVID-Related Operating or Other Costs

The new legislation also allows school districts, municipalities, and fire districts to use money from **any** reserve fund (including a capital reserve fund) to pay for **operating costs or other costs** attributable to the pandemic.

In this situation, however, only a **temporary transfer** is allowed. The reserve fund must be **reimbursed** within the next five fiscal years, starting with the fiscal year following the transfer, and at least twenty percent of the amount borrowed must be reimbursed each fiscal year. Further, the amount of interest that would have been earned must be estimated and added to each such payment.

Extension of Time to Repay Inter-fund Transfers

Typically, short-term inter-fund transfers must be repaid by the end of the fiscal year in which the transfer is made. Under the new legislation, inter-fund advances for costs attributable to the pandemic do not need to be repaid until the close of the **following** fiscal year.

The full text of the new legislation can be found here: A.10942 Thiele / S.8417 Krueger.

This legislation is effective immediately, and further guidance from the Office of the State Comptroller will be forthcoming. If you have any questions about the new legislation, please contact Jeffrey Stone (716.848.1327) or John Alessi (716.848.1567).

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