ATTORNEYS AT LAW

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Financing Your Project

Municipal Capital Improvement Bonds/Notes

Terminology



Title 17 v. Title 24

Most provisions relevant to financing are in Title 24.

Look to Title 24, Chapter 53, Subchapter 1.



Bond v. Note

Bonds have more formal requirements; notes offer more flexibility.

Capital Improvement Note:

24 V.S.A. § 1786a



Taxable v. Tax-Exempt

Tax-exempt: interest is not taxable to the lender, so the borrower pays a lower interest rate.



This presentation covers capital improvements, not current expense or working capital financing. School district votes have some additional requirements.

Defining the Project



Project description

A clear description of the project to be financed.



Estimated cost

Includes design and development costs.



Maximum borrowing

What is the most you would need to borrow? You don't want to come back to voters if approval is too low; it can take years to develop and build a project. Are capital reserves or grant funds available?



Timing of the vote

When do you want the vote to happen? Annual meeting or special meeting.

Bond Election Documents



Necessity Resolution

24 V.S.A. § 1755(a)(1)

Passed by the legislative branch



Warning

24 V.S.A. § 1755(a)(2)

Sets out the details of the vote



Ballot

24 V.S.A. § 1758

The bond article put to the voters



Clerk's Certificate of Vote, Posting and Publication

Used after the vote



Declaration of Official Intent

Required to reimburse yourself with future tax-exempt bond proceeds

Necessity Resolution (24 V.S.A. § 1755(a)(1))

The legislative branch must pass a resolution stating that:

1. The public interest or necessity demands the improvements (the project)
2. The cost will be too great to be paid out of ordinary annual income and revenue
3. The municipality needs to borrow the funds to pay for the improvements
4. The proposition of incurring bonded debt to pay for the improvements should be submitted to the qualified voters

10%

of voters can petition to get a bond article on the ballot

The Warning (24 V.S.A. § 1755(a)(2))

The warning shall state:



Object and purpose

The object and purpose for which the indebtedness is proposed to be incurred



Estimated cost

The estimated cost of the improvements



Amount of bonds

The amount of bonds proposed to be issued



Place, date and hours

The place where and the date on which the meeting is held, and the hours of opening and closing the polls

The Ballot

24 V.S.A. § 1758

Australian ballot

Required, unless the term is five years or less.

The ballot article shall be substantially in the form shown at right.

SAMPLE ARTICLE LANGUAGE

Shall the bonds of the _____ of _____ in an amount not to exceed _____ be issued for the purpose of _____?

If in favor of the bond issue, make a cross (x) in this square. ☐

If opposed to the bond issue, make a cross (x) in this square. ☐

Notice Requirements

3 weeks

Publication

24 V.S.A. § 1756(a)(1)

Warning published in a newspaper of known circulation in the municipality once a week for three consecutive weeks, on the same day of the week. The last publication must be not less than five nor more than ten days before the meeting. Publishing in the annual report is not sufficient.

5 places

Posting

24 V.S.A. § 1756(a)(2)

Warning posted in five public places within the municipality for the two weeks immediately preceding the meeting.

30 days

Informational meeting

17 V.S.A. § 2680(h)

Australian ballot informational meeting held within 30 days before the vote. Post the warning at least 10 days in advance of the hearing in at least two public places within the municipality and in the town clerk's office.

After the Vote

If the vote fails	You can only vote on funding “same or similar” improvements twice in a one-year period. **24 V.S.A. § 1755(b)**
If it passes with a procedural error	For example, a publication issue. It may be corrected by a validation resolution from the legislative branch. **24 V.S.A. § 1757**
Clerk's Certificate	Wait at least 30 days for the rescind/reconsider period. **17 V.S.A. § 2661**
Preliminary legal opinion	Follows the Clerk's Certificate.

Time to Get Funding!

Issuing Municipal Bonds and Notes



Find a Lender

- Vermont Municipal Bond Bank: pooled loans funded by bonds it sells publicly twice a year (March and August; applications due in December and May)
- Clean Water and Drinking Water State Revolving Funds: loans for eligible water and sewer projects, run through the Department of Environmental Conservation with the Bond Bank as partner
- Local commercial bank: direct loan, flexible timing, simpler documents
- Private placement: negotiated with one institutional buyer
- Public sale by bid or underwriter: broadest market, but issuance costs weigh on small issues

❖ *Compare all-in cost, timing, term, prepayment rights, and documentation burden*

24 V.S.A. §§ 1765, 1822(c); Vermont Municipal Bond Bank and DEC program materials

Check the debt limit (24 V.S.A. § 1762)

- Indebtedness for public improvements, with prior debt, may not exceed ten times the last grand list
- Bonds issued beyond the limit are void
- Some items, such as current expense, tax anticipation notes, water supply and electric light obligations, are not counted toward limit
- A charter or special act may set a different limit and generally controls

Maximum term and repayment pattern

- **Bonds** are payable serially, with the first payment due within one to five years of issue (24 V.S.A. § 1759(a)(1))
- After that, annual payments in substantially level or declining amounts (24 V.S.A. § 1759(a)(1))
- Final maturity within 20 years, or 30 years if the project's useful life is at least 30 (24 V.S.A. § 1759(a)(3))
- General obligation bonds for a municipal plant may run up to 40 years (24 V.S.A. § 1759(b))

Setting the terms



- The legislative body sets the rate or rate method, dates, denominations, place of payment, and form
- The rate may not exceed any maximum approved by the voters; if none was voted, the legislative body approves the rate
- The board may provide that bonds be sold on bids fixing the rate

24 V.S.A. §§ 1759(a)(1), 1763

Arbitrage & Private Activity



Arbitrage

- Cannot borrow too much
- Cannot borrow too early
  - ❖ Remember the Declaration of Official Intent



Private Activity

- Needs to be for a governmental purpose
- Payments/security cannot come from private sources
- Qualified private activity bonds (e.g., 501(c)(3))

Temporary notes in anticipation of bonds



- *After a successful bond vote*, the legislative body may borrow for up to one year in anticipation of bond proceeds
- Notes may be renewed; the outstanding amount cannot exceed the authorized bond amount
- Beyond one year, the authorized amount shrinks annually and the bond's maximum maturity shortens
- Renewals can run no later than ten years from the original note

24 V.S.A. § 1773(a)–(b)

Other capital borrowing tools

- Bonds may fund capital improvements only, not the ordinary expenses of the municipality
- Other debt instruments (Notes) for improvements or capital assets, for up to their useful life; five years or less needs a warned voice vote, longer terms follow the bond vote procedures (24 V.S.A. § 1786a)
- Emergency borrowing for improvements tied to an all-hazards event or declared emergency: up to five years or useful life of the improvement (24 V.S.A. § 1790)
- Non-appropriation-based leases for equipment and technology are not counted as debt and do not need voter approval (24 V.S.A. § 1789)

Closing Documents

- Bond/Note
- Legislative Body Resolution
- Tax Certificate/Non-Arbitrage Certificate (only for tax-exempt interest rate)
- IRS Form 8038-G (only for tax-exempt interest rate)
- Legal Opinion
- Security Agreement (if security other than general or revenue obligation)
- Lease Agreement (if non-appropriation financing)

Utility revenue bonds

- Secured by utility revenues; not general indebtedness of the municipality
- Different voting requirements
- May be sold by negotiated sale, competitive bid, or to the Vermont Bond Bank
- A municipal plant may issue up to 50 percent of its total assets by board resolution; Public Utility Commission approval applies where required (electric)
- Challenges are barred six months after the vote

24 V.S.A. §§ 1822–1823, 1826; 30 V.S.A. § 108

Paying the debt



- Each year the board assesses a tax sufficient to pay interest and the principal falling due before the next year's taxes
- Sinking funds must be kept intact, separate, and pledged to retiring the debt
- Refunding bonds may be issued by board resolution to pay bonds or notes at maturity or earlier, with costs included

24 V.S.A. §§ 1764, 1771, 1772, 1777

After closing

- Spend proceeds on the voted purpose – within arbitrage timelines!
- Leftover or unspent proceeds can be redirected only by a warned vote; otherwise they pay principal
- Ongoing federal tax-exemption duties apply on top of Vermont law – will need someone (e.g., treasurer, finance director) to monitor compliance with federal tax requirements

24 V.S.A. § 1753

Questions and discussion

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