

# LOCAL FINANCE NOTICE

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## Statutory and Regulatory Changes Affecting the Local Bond Law

P.L.2003, c.15 (S109/A605), amending the Local Bond Law (N.J.S.A. 40A:2-1 et seq.), was signed into law on February 3, 2003 by Governor James E. McGreevey. While the law is effective immediately, several sections require the Local Finance Board (Board) to adopt rules or the Director of the Division of Local Government Services (Director) to act before they can be used.

In addition, the Local Finance Board recently adopted rules permitting the summary publication of a bond ordinance pursuant to N.J.S.A. 40A:2-30. The changes affect debt issued by counties and municipalities (local units).

This Local Finance Notice summarizes the new law and the rule. The statutory changes simplify the issuance of bonds and bond anticipation notes, permit the use of true interest costs in awarding bids, addresses deductions from gross debt, and permits, subject to Local Finance Board rules, electronic bid proposals to be used for the sale of bonds by local units. A copy of the law showing the changes is available online at the [Local Finance Notice](#) link at [www.nj.gov/dca/lgs](http://www.nj.gov/dca/lgs).

### Summary Publication of Bond Ordinances

In January the Board adopted N.J.A.C. 5:30-2.4 which permits the publication of a summary of a bond ordinance instead of the entire ordinance. A copy of the rule and the form of publication is attached to this Notice and is found on GovConnect in the Municipal Clerk document library and on the DLGS web site. The procedures in the rule are in effect and can be used immediately.

### Local Bond Law Amendments

#### Supplemental Debt Statements and Deductions

N.J.S.A. 40A:2-10 was amended to clarify that a Supplemental Debt Statement (SDS) for a refunding bond ordinance must be prepared and filed with the Clerk and Director when there is a net increase in the amount of debt authorized by the issuer. An example of this is when the amount of the refunding bonds authorized in the refunding bond ordinance, less the amount of existing debt to be refunded is greater than zero. Filing requirements of SDS's for non-refunding bond ordinances remain unchanged.

The law deleted the requirement in N.J.S.A. 40A:2-26 that when calculating net debt, no deduction from gross debt is taken when bonds are **sold** for **both** a purpose for which no deduction against gross debt **and** a purpose for which a deduction may be taken. This means that no adjustment is made to the net debt calculation when combined purpose bonds are sold and presumes the calculation was properly made when the respective SDS's were initially filed.

**Exemption from Five Percent Down Payment for Grant Funded Ordinances**

N.J.S.A. 40A:2-11 was amended to exempt bond ordinances from the five percent down payment requirement if the projects are to be funded by State loans and grants such as Green Acres, Environmental Trust Fund, Transportation Trust Fund and similar grants. This means that applications to the Local Finance Board for waiver of the deposit are no longer required. This takes effect immediately.

**Bond Sale Provisions**

N.J.S.A. 40A:2-26 added new subsection (g) that allows local units to adjust the proposed maturity schedule of bonds up to 24 hours before receipt of bids or 24 hours after award of bids. The adjustment cannot exceed 10% (up or down) of the principal for any maturity, and adjustment procedures must be set forth in the notice of sale.

The amendments to N.J.S.A. 40A:2-27 provide new ways to sell bonds. Local units can sell bonds at public sale through sealed bids or electronically submitted proposals. While subject to rules of the Board, local units will soon be able to take advantage of commercial services that permit electronic auctions or submission of electronic sealed bids, in addition to the traditional submissions of sealed bids. The Board will issue additional guidance on using this provision.

Other changes to N.J.S.A. 40A:2-27 affect private sales of obligations. Restrictions on private sales were amended to now permit:

- Private sale if the issue is \$1 million or less (The prior limit for private sales was \$100,000.) or;
- If no legally acceptable bids are received at the first public offering, the bonds may be sold at private sale within 30 days after the advertised date for public bidding, as long as the terms are substantially similar to the publicly advertised terms.

N.J.S.A. 40A:2-29 now requires that bonds sold at competitive sale require bids at not less than par. In addition, bonds sold through private sale or through electronic bidding may be sold for not less than 99% of par, or such other minimum amount approved by the Director.

**Bond Sale Advertising and Sales**

The law amends the bond sale advertising requirements in N.J.S.A. 40A:2-30. The summary of the notice of sale may now be advertised electronically. The law now permits a notice of sale to be advertised in a nationally recognized local government bond marketing publication or electronic information service. The seven days publication in advance of sale rule is unchanged, regardless of medium. The act deleted the requirement of publication within the City of New York or the State of New Jersey.

New subsection (b) is added to N.J.S.A. 40A:2-30 permitting a public sale to be postponed without re-advertising by the chief financial officer if the full notice of sale contained precise information concerning the postponement and rescheduling procedure. A CFO may postpone a correctly advertised public sale on 24 hours notice. A postponed public sale can be recommenced upon 48 hours notice in accordance with the terms set forth in the full notice of sale. A public sale may not be postponed for more than 60 days without re-advertisement.

The Act added new requirements for the notice of public sale, regardless of how the notice of sale is advertised. N.J.S.A. 40A:2-31 now requires that along with the principal amount, date, denomination and maturity, any authorization for adjustments to the maturities must be cited. Along with the bond interest rates, the notice must state the method of calculation of interest cost for determination of the

winning proposal (net or true), any postponement procedures; the type of sale must be specified, and if proposals are to be submitted electronically or through sealed bid.

N.J.S.A. 40A:2-32 includes provisions for bid deposits to be part of a bond sale proposal. Because electronic bids do not permit the use of a cash deposit instrument, the Board is authorized to adopt rules to allow local units to accept a financial surety bond in lieu of a certified, cashier or treasurer's check.

The procedure of opening bond sale proposals has been amended to allow electronic sales and the new provisions for postponing sales. If the sale is postponed, any bids or electronic proposals will be publicly opened and announced at the recommended date.

Electronic bidding (auction or sealed bid) cannot take place until the Board adopts rules affecting details of these provisions.

### **Calculation of Interest Costs**

N.J.S.A. 40A:2-32 now allows true interest cost as the basis for bond sale awards. True interest cost calculates the present value of the bid and necessitates the use of a computer program (usually provided by a financial advisor) to compare proposals. The amendment also requires the local unit to announce in the notice of public sale whether the award shall be based on net interest cost or true interest cost.

N.J.S.A. 40A:2-32 also permits local units to authorize bidders to aggregate consecutive principal maturities for which it bids the same interest rate, into "term bonds" with mandatory sinking fund redemption equal to the principal maturities. This is expected to result in improved flexibility for managing refunding bond proceeds.

### **Use of Refunding Bonds**

N.J.S.A. 40A:2-51 now permits issuance of refunding bonds to pay temporary emergency appropriations and advance funding of pension obligations as part of a State authorized early retirement incentive (ERI) program. Bonds issued under these provisions are considered deductible against gross debt.

Amendments at N.J.S.A. 40A:2-51(c) authorize the Board to issue rules allowing issuance of refunding bonds without approval of the Board when debt service savings are realized at a level set by the Board. This section will not take effect until the Board adopts rules setting the level and other procedures.

New subsection (d) of N.J.S.A. 40A:2-51 permits a governing body to authorize its CFO to conduct a refunding bond sale, award the bids, and report to the governing body on the results.

N.J.S.A. 40A:2-52 has been amended to clarify that a down payment is not required for refunding bond ordinances. It also provides that unless new debt is added to a refunding bond ordinance, debt authorized by a refunding ordinance is deductible from gross debt in calculating net debt. This ensures that debt is only counted once for net debt calculations.

### **Bond Anticipation Note Changes**

Finally, a long-standing conflict with bond anticipation notes has been resolved. N.J.S.A. 40A:2-8 has been repealed and replaced with new language. The new law continues the policy that BAN's may be

renewed for up to ten years and that they must be paid off no later than the first day of the fifth month following the close of the tenth fiscal year next following the date of the original notes.

To re-establish BAN repayment policies, the new section also provides that BAN's cannot be renewed past the third anniversary unless an amount equal to at least the first legally required installment is paid prior to each anniversary. The payment must be from funds other than those generated from the notes, i.e., budgeted debt service appropriations.

In other words the law is now clear that BAN repayment must now start after the third anniversary of their original issuance and continue each year that the BAN is outstanding, up to and including, the tenth year. This affects existing BAN's and is effective immediately. The local unit's bond counsel, financial advisor, or municipal auditor should be consulted on the handling of this provision

It is important for local officials to review the changes in this law. Consultation with bond counsel is also appropriate to understand the intricacies of these provisions. The Division and Local Finance Board will issue additional information on rules. Questions on these provisions should be addressed to bond counsel.



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Matthew U. Watkins, Director  
Division of Local Government Services

Enclosure

Distribution: Chief Financial Officers and Municipal Clerks via GovConnect

**Summary Form of Bond Notice Publication  
N.J.A.C. 5:30-2.4(a)**

**Form of Notice of Pending Bond Ordinance and Summary publication**

Pursuant to N.J.S.A. 40A:2-17(b), a local unit may choose to publish a bond ordinance in summary form and shall use the following form of summary of bond ordinance and notice of adoption:

**NOTICE OF PENDING BOND ORDINANCE AND SUMMARY**

The bond ordinance, the summary terms of which are included herein, was introduced and passed upon first reading at a meeting of the governing body of the \_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, State of New Jersey, on \_\_\_\_\_, 200\_\_. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held at the \_\_\_\_\_, in the \_\_\_\_\_ on \_\_\_\_\_, 200\_\_ at \_\_\_\_ o'clock \_\_M. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the Clerk's office for the members of the general public who shall request the same. The summary of the terms of such bond ordinance follows:

- Title:
- Purpose(s):
- Appropriation:
- Bonds/Notes Authorized:
- Grants (if any) Appropriated:
- Section 20 Costs:
- Useful Life:

\_\_\_\_\_, Clerk

This Notice is published pursuant to N.J.S.A. 40A:2-17.

**BOND ORDINANCE STATEMENTS AND SUMMARY**

The bond ordinance, the summary terms of which are included herein, has been finally adopted by the \_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, State of New Jersey on \_\_\_\_\_, 200\_\_ and the twenty (20) day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law, has begun to run from the date of the first publication of this statement. Copies of the full ordinance are available at no cost and during regular business hours, at the Clerk's office for members of the general public who request the same. The summary of the terms of such bond ordinance follows:

- Title:
- Purpose(s):
- Appropriation:
- Bonds/Notes Authorized:
- Grants (if any) Appropriated:
- Section 20 Costs:
- Useful Life:

\_\_\_\_\_, Clerk