

# Become A Better Borrower: Municipal Bond Basics

Massachusetts Municipal Association  
Annual Meeting and Trade Show  
January 25, 2020

Presented by Matthew G. Feher, Esq.



THE LEADER IN PUBLIC SECTOR LAW  
ATTORNEYS AT LAW

© 2020 KP LAW, P.C. | ALL RIGHTS RESERVED.

# Disclaimer

This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship between the presenter and the recipient. You are advised not to take, or to refrain from taking, any action based on this information without consulting legal counsel about the specific issue(s).

# What are we talking about?



- What is a Tax-Exempt Municipal Security
  - A bond, note or other obligation issued by state or local governments (or their agencies/authorities) by a government entity used to evidence debt to fund capital investments
  - The interest on which is excluded from gross income for federal tax purposes under Section 103 of the Internal Revenue Code and may be exempt from state income and personal property taxation.
- Types:
  - General Obligation Bonds
    - Debt service is payable from the ad valorem property tax, subject to applicable limitations (i.e. Proposition 2½).
  - Special Obligation Bonds
    - Debt service is payable from pledged project revenues.
    - Massachusetts municipalities generally cannot issue special obligations.

# Municipal Borrowing Overview



- Authorizing Debt
  - Statutory Authority
  - Charter/Bylaws/Ordinances
  - Town Meeting/City Council Vote
  
- Primary Issuance/Sale of Debt
  - Parties to the Deal
  - Sale Process
  - Closing Documentation and Certifications
  
- Disclosure & Post-Issuance Compliance
  - Continuing Disclosure Obligations

# Authorization: Key State Authority



- G.L. c. 44, §7 – Borrowing Purposes Within Debt Limit
- G.L. c. 44, §8 – Borrowing Purposes Outside Debt Limit
- G.L. c. 44, §10 – Debt Limitation
- G.L. c. 44, §20 – Use of Sale Proceeds
- G.L. c. 44A – Qualified Bond Act

# Authorization: Borrowing Purposes

- Purposes for which a municipality may borrow
- Maximum term for which debt can be issued
- Director of Accounts is authorized to set alternative longer maximum borrowing terms

BORROWING WITHIN DEBT LIMIT – <u>G.L. c. 44, § 7</u>				
Maximum Term is Statutory Maximum Term, or DLS Authorized Maximum Term <u>if shorter</u>				
Clause	Borrowing Purpose	Statutory Limits/Approvals	Statutory Maximum Term	DLS Authorized Maximum Term Based on Useful Life
1	Acquisition of an interest in land for any purpose a city or town is authorized to acquire land or interests in land, provided the land or the interest in land has a useful life of at least 5 years  Landscaping, alteration, remediation, rehabilitation or improvement of land owned by a city or town, provided the project has a useful life of at least 5 years  Dredging, improvement, restoration, preservation or remediation of public waterways, lakes or ponds, provided the project has a useful life of at least 5 years		Useful life of asset or project, not to exceed 30 years	30 years
1	Acquisition of equipment or other assets, provided the equipment or asset has a useful life of at least 5 years		Useful life of asset, not to exceed 30 years	20 years  Equipment or asset must cost \$5,000 or more per unit  CEO determines 5-20 maximum term based on useful life of equipment or asset

BORROWING OUTSIDE DEBT LIMIT – <u>G.L. c. 44, § 8</u>				
Maximum Term is Statutory Maximum Term, or DLS Authorized Maximum Term <u>if longer</u>				
Clause	Borrowing Purpose	Statutory Limits/Approvals	Statutory Maximum Term	DLS Authorized Maximum Term Based on Useful Life
1	Temporary loans under G.L. c. 44, §§ 4, 6, 6A, 17		Per applicable § 4, 6, 6A, 17	
2	Providing and distributing food, temporary shelter and other necessities of life during emergencies under G.L. c. 40, § 19		2 years	
3	Establishing or purchasing a water supply system; taking or purchasing water sources, either from public land or private sources, water or flowage rights, or land for the protection of water system		30 years	
3A	Conducting groundwater inventory and analysis of the water supply, including pump tests and quality tests, in connection with development of new or additional water supply sources		10 years	
4	Constructing or enlarging reservoirs; constructing filter beds, construction or reconstruction or making extraordinary repairs to standpipes, buildings for pumping stations including original pumping station equipment, and buildings for water treatment, including original equipment, and acquiring land or any interest in land necessary in connection with those purposes		30 years	
4A	Remodeling, reconstructing or making extraordinary repairs to reservoirs and filter beds	DEP must approve project plans before debt issued	30 years	
5	Constructing or reconstructing, laying or relaying aqueducts or water mains, or for lining or relining such mains and for the development or construction of additional well fields and for wells		40 years	
6	Purchasing and installing water meters		10 years	No change
7	Paying share of municipality's cost to increase the storage capacity of any reservoir, including land acquisition, constructed by the water resources commission for flood prevention or water resources utilization		20 years	30 years
7A	Purchasing, replacing or rehabilitating water departmental equipment		10 years	No change
8	Establishing, purchasing, extending, or enlarging a municipally-owned gas or electric lighting plant, community antenna television system or a telecommunications system		20 years	No change
8A	Remodeling, reconstructing, or making extraordinary repairs to a municipally-owned gas or electric lighting plant, community antenna television system or telecommunications system	MFOB must approve debt and term	10 years	No change

# Authorization: Local Approval

KP | LAW



- Municipal Approval Process
  - Town Meeting Borrowing Vote
  - City Council Loan Order
- Contingent Borrowing
  - Debt approved contingent on Proposition 2½ debt exclusion ballot question
  - Voter approval for contingent borrowing approved at Annual Town Meeting must be obtained by September 15
  - Voter approval for contingent borrowing approved at any other Town Meeting must be obtained within 90 days
  - Funds cannot be spent until ballot question approved
- Legal Requirement Letter/Due Diligence
- “Green Light” Letter
  - Preliminary legal opinion as to authorization

# Primary Issuance Participants



- Issuer
- Purchaser/Underwriter
- Bond Counsel
- Underwriter's Counsel
- Financial Advisor
- Paying Agent/Trustee



# Primary Issuance Process



- Competitive Sale is commonplace in Massachusetts
  - Negotiated Sale may also be undertaken (the conventional practice in most other jurisdictions)
- Financial Advisor/Bond Counsel Structure Schedule
- Notice of Sale/Preliminary Official Statement Advertised
- Financial Advisor Obtains Quotes on Sale Date
  - Lowest true interest cost selected
- Final Official Statement Posted
- Bond Counsel prepares all Closing Documentation including Bond Certificates and Legal Opinion
- Settlement and Delivery of the Bonds

# Primary Issuance Key Closing Documents



- Authorization Documents
  - Borrowing Vote, Loan Order, Resolution
- Sale Documents
  - Competitive – Notice of Sale and Bid Form
  - Negotiated – Bond Purchase Agreement
- Primary Offering Documents
  - Preliminary Official Statement
  - Final Official Statement
- Continuing Disclosure Undertakings
- Tax Certificate
- Issuer General Certificate
- Legal Opinions
- Bond Certificates

# Disclosure Obligations & Post-Issuance Compliance



## ■ SEC Rule 15c2-12

- Primary Disclosure (POS/FOS)
- Secondary (Continuing) Disclosure

- Annual Reports and Audits
- Material Events Notices:

- |   |  |
|---|--|
| ✓ Principal or interest delinquencies   | ✓ Rating changes   |
| ✓ Material non-payments/defaults  | ✓ Bankruptcy, insolvency receivership or similar events  |
| ✓ Unscheduled draws on debt reserves or credit enhancements reflecting financial difficulties | ✓ Merger, consolidation, or acquisition of issuer  |
| ✓ Substitutions of credit or liquidity providers, or their failure to perform                 | ✓ Appointment of successor or additional trustee   |
| ✓ Adverse tax opinions  | ✓ Issuer's incurrence of material financial obligation or agreement to new terms which affect Bond owners                        |
| ✓ Modifications to rights of Bond owners  | ✓ Default, acceleration, termination, or modification of a financial obligation that reflect the issuer's financial difficulties |
| ✓ Bond calls, if material   |  |
| ✓ Defeasances   |  |
| ✓ Release, substitution, or sale of property securing Bonds, if material                      |  |

# Resources



DLS: Asset Useful Life Schedule

[www.mass.gov/files/documents/2017/09/22/dlsassetusefullifeschedules-maximumborrowingterm.pdf](http://www.mass.gov/files/documents/2017/09/22/dlsassetusefullifeschedules-maximumborrowingterm.pdf)

DLS: IGR No. 17-21 re: Borrowing

[www.mass.gov/files/documents/2017/09/11/igr17-21.pdf](http://www.mass.gov/files/documents/2017/09/11/igr17-21.pdf)

DLS: IGR No. 02-101 re: Debt Exclusions

[www.mass.gov/files/documents/2016/08/ng/2002-101.pdf](http://www.mass.gov/files/documents/2016/08/ng/2002-101.pdf)

Municipal Securities Rulemaking Board Electronic Municipal Market Access (EMMA)

[www.emma.msrb.org](http://www.emma.msrb.org)

KP Law website:

[www.k-plaw.com](http://www.k-plaw.com) (click on the “Resources” tab)

# Questions?

Matthew G. Feher, Esq.  
KP Law, P.C.  
101 Arch Street, 12<sup>th</sup> Floor  
Boston, MA 02110  
(617) 556-0007  
[www.k-plaw.com](http://www.k-plaw.com)



THE LEADER IN PUBLIC SECTOR LAW  
ATTORNEYS AT LAW

© 2020 KP LAW, P.C. | ALL RIGHTS RESERVED.