



Date
November 2, 2022

Time
3:30 – 4:30 PM

Instructor
M. Jason Akers
Managing Partner
Foley & Judell, L.L.P.

Location
Live-Streamed and
Onsite at Louisiana
Immersive Technologies
Enterprise (LITE)

Method of Delivery
Classroom instruction

Learning Level
Basic

CPE Hours
1.0 Hours

CPA Subject Matter
Accounting and Auditing

Prerequisite
None

Initial and Ongoing Compliance in Debt Issues

Description

A comprehensive look at the debt of public bodies, this session will begin with a look at the various types of bonds commonly issued and their respective approval requirements, then focus on the different methods for the sale of bonds, and finish with a discussion of ongoing compliance matters that impact the public body while the bonds are outstanding.

Objectives

To provide an overview of compliance in debt issues:

- Various types of debt
- What is considered debt
- State Bond Commission approval requirement
- Sale of bonds
- Common covenants and requirements

Who Will Benefit

- Elected Officials/Appointed Officials
- Local Government Employees/Local Government Auditors

About the Instructor

M. Jason Akers has over 20 years of experience as a public finance attorney. As a managing partner with Foley & Judell, L.L.P., Mr. Akers works for public entities throughout Louisiana on bond issues and other types of financing arrangements. In addition to serving as bond counsel on finance issues, Mr. Akers also represents his clients in various economic and community development activities. Mr. Akers is a member of the Board of Directors and Executive Committee of the National Association of Bond Lawyers and an elected fellow of the American College of Bond Counsel.

INITIAL AND ONGOING COMPLIANCE IN DEBT ISSUES



Presented by:
Jason Akers
Managing Partner
Foley & Judell, L.L.P.

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TOPICS TO COVER

- Common Types of debt
- What is not debt?
- State Bond Commission approval
- Sale of bonds
- Common bond covenants and requirements
- Continuing disclosure

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COMMON TYPES OF DEBT – GENERAL OBLIGATION BONDS

- Difference in legal designation vs. designation in notes to financial statements
- Election Requirement
- “Full faith and credit” of the Issuer
- Special, Unlimited Ad Valorem Tax
- Initial Compliance Concerns
 - Are the terms of the bonds within the election parameters?
 - Do the bonds exceed the Issuer’s debt limitation?

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COMMON TYPES OF DEBT – TAX-SECURED BONDS

- Sales Tax Bonds
- Limited Tax Bonds (Ad Valorem Taxes)
 - Election Requirement
 - Security and Source of Payment
 - Coverage Requirements
- Are these Revenue Bonds?
- Initial Compliance Concerns
 - Does the purpose match the pledged revenue?
 - Is the amortization permitted under law?
 - Has the Issuer established the proper accounts?

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COMMON TYPES OF DEBT – UTILITIES REVENUE BONDS

- What is a “utility”?
- Net Revenue Pledge vs. Gross Revenue Pledge
- Single System vs. Combined System
- Use of other funds to support the system
- Grant of mortgage
- Initial Compliance Concerns
 - Is the amortization permitted under law?
 - Has the issuer established the proper accounts?

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COMMON TYPES OF DEBT – REFUNDING BONDS

- Economic Refunding vs. Non-Economic Refunding
- Redemption vs. Defeasance
- Escrow Agreement
- SBC Minimum Savings Schedule guidance
 - < 1 year = 0%
 - 1-2 years = 1.50%
 - 2-4 years = 3.00%
 - > 4 years = 5.00%

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COMMON TYPES OF DEBT – OTHERS

- Excess Revenue Bonds
- General Fund Loans
- Cash Flow Loans
- Bond Anticipation Notes
- Grant Anticipation Notes
- Special Revenue Notes
- Development Financing

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WHAT IS NOT DEBT?

- Lease of Movables (La. R.S. 39:1410.60)
 - Non-appropriation clause
 - No anti-substitution clause
 - No penalty provisions
- Non-appropriation debt (AG Opinions)
 - Unconditional right vested in public entity
 - No UCC or other filings
- P3s & CEAs
 - Facts and Circumstances analysis

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WHAT IS NOT DEBT?

- “Debt is more than an obligation to pay a sum of money... Debt is incurred when there is a financing.”
- August 30, 2022 letter of Legislative Auditor & State Treasurer identifies several indicia of debt:
 - Finance construction or pre-construction costs
 - Interest rate (express or imputed) or other finance charges
 - Restrictions on non-appropriation
 - Requirement to raise fees/taxes/etc.
 - Ownership at conclusion of arrangement
 - Grant of security interest

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STATE BOND COMMISSION

- La. Constitution Art. VII, Section 8(b): No bonds or other obligations shall be issued or sold by the state, directly or through any state board, agency, or commission, or by any political subdivision of the state, unless prior written approval of the state bond commission is obtained
- La. R.S. Section 39:1410.60: No political subdivision created under or by the constitution and laws of the state shall have authority to borrow money, incur debt, or to issue bonds, or other evidences of debt, or to levy taxes, or to pledge uncollected taxes or revenues for the payment thereof ... without the consent and approval of the State Bond Commission.

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STATE BOND COMMISSION

- La. R.S. Section 39:1410.63(A): Any contract, debt, obligation, bond, or other evidence of indebtedness whatsoever, incurred or issued ... without the consent and approval of the [State Bond Commission] shall be null and void, and no court of this state shall have jurisdiction to enforce the payment thereof.

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STATE BOND COMMISSION

- La. R.S. Section 39:1410.63(B): Any person or any officer, agent, or employee of any governmental agency ... who violates this Part, or who counsels, aids, or abets the violation thereof ... or who engages or attempts to engage, in the borrowing or lending of, or any attempt to borrow or lend any money ... the incurring of any debt, the issuing or negotiation or sale of any bond or other evidence of debt whatsoever, ... or the pledge of any tax, income, or revenues, without the consent and approval, first hand and obtained, of the [State Bond Commission], shall be fin
ed not less than one hundred dollars and not more than five
hundred dollars, and imprisoned for not more than six
months.

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STATE BOND COMMISSION

- Application
 - Deadline
 - Required Forms
 - Financial Disclosure
- Review Period
 - Analyst is Assigned
 - 10-working day deadline
 - Agenda Review: Monday before the meeting
- Analysis
 - Legal
 - Financial
- Approval
 - Commission Membership
 - Meetings

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SALE OF BONDS

- Private Placement/Bank Loans
- Public Sales
 - Competitive
 - Negotiated
- Bond Ratings
- Bond Insurance

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BOND COVENANTS

- Operational Covenants
 - Maintenance of Tax Levy/System/Property
 - Rate Covenant (Debt Service Coverage requirement)
 - Additional Bonds Test
 - Insure System/Property
 - Investment of funds
 - Events of Default
 - Acceleration
 - Cross default

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BOND COVENANTS

- Funds and Accounts
 - Revenue Fund
 - Debt Service/Sinking Fund
 - General Obligation Bond Sinking Funds
 - Other Sinking Funds
 - Reserve Fund
 - Funding Requirement
 - Contingencies Fund
 - Project/Construction Fund

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BOND COVENANTS

- Tax Covenants
 - Use of proceeds/Change in Use
 - Change of use contrary to initial approval
 - Change of ownership/entitlement
 - Arbitrage Rebate Requirement
 - Investing bond-related funds at a higher return than paid on the bonds
 - Record Retention
 - Post-Issuance Compliance Policy

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CONTINUING DISCLOSURE

- Private Placements/Bank Loans
- Public Debt – SEC Rule 15c2-12
 - Continuing Disclosure Certificate/Agreement
 - Dissemination Agent
 - Filing Deadlines
 - National Repository: MSRB's Electronic Municipal Marketplace Access (EMMA) emma.msrb.org

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CONTINUING DISCLOSURE

- Annual Reports
 - Audit
 - Financial and Operating Data
- Listed Events (f/k/a Material Events)
 - 16 potential events
 - Most common are defeasances, rating changes, bond calls and non-payment related defaults
 - Newest Listed Events: Financial Obligations

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CONCLUSION

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