

State Board of Finance Capital Outlay & Bonding Overview



**PRESENTATION TO THE
LAND GRANT COMMITTEE
NOVEMBER 19, 2018**

**DONNA MAESTAS
ACTING DIRECTOR
STATE BOARD OF FINANCE**

Capital Outlay Funds

2

What is the source of Capital Outlay Funds?

The money comes from a State Board of Finance Bond or Note issuance.

Capital Outlay Funds

3

Capital Outlay Process Summary:

Local legislator requests funds for a project →

Project is listed in Capital Outlay Bill →

Bill is approved in the Legislative Session →

Governor can veto projects, signs bill →


SBOF uploads Questionnaires & notifies Grantor Agencies →

Grantor Agencies notify Political Subdivision (Grantee) to fill in Questionnaire →

Projects are reviewed and added to the Bond or Note

Municipal Bonds

4

- Debt instrument issued by a governmental entity.
- Investor buys the bonds  loaning money to governmental entity
- SBOF issues:
 - Taxable bonds
 - Tax-exempt bonds
 - ✦ capital assets (i.e. brick and mortar) for governmental purposes

Tax-Exempt Bonds

5

- SBOF can then sell tax exempt bonds at a lower interest rate.
- The investors do not have to pay taxes on their earnings.
- Sections 103 and 141-150 of the IRS code regulate tax-exempt bonds.

Some Tax-Exempt Regulations

6

- 5% of the bond proceeds to be spent within 6 months of closing.
- 85% of the bond proceeds to be spent within 3 years of closing.
- Tax-exempt bonds are subject to yield restrictions.
- Tax-exempt bonds are subject to arbitrage rebate.

More Tax-Exempt Regulations

7

- Arbitrage rebate payments due:
 - every 5 years after issuance and within 60 days after the bonds are paid off.
- Restrictions on private use/private payment (Anti-donation)
- Other requirements:
 - registered form
 - requirement to file information return (Form 8038) with the IRS
 - limitations on maturity of bonds (as compared to useful life of financed assets)

Elements of SBOF Bonds

8

- Principal amount
- Premium amount
- Fixed Interest rate
- 10 Year maturity or term
- Payment schedule:
 - annual principal payments
 - semi-annual interest payments
- Source of payment - statewide property tax mill levy:
 - severance taxes for STBs
 - statewide property tax mill levy for GOBs
- Right of redemption: “callable” or “non-callable”
- Underwriter’s discount

SBOF Bond Issuance Process & Consultants

9

- **Financial Advisor**
 - determine the capacity of the bond
 - preliminary interest rate
 - premium
- **Moody's Investor Services and Standard and Poor's (S&P)**
 - credit rating on the issuance
- **Disclosure Counsel**
 - preliminary official statement
 - official statement
- **Bond Counsel**
 - legal documents for sale

SBOF Bond Issuance Process

10

- SBOF, Bond Counsel and Legal Counsel review all the capital outlay project Questionnaires.
- SBOF staff receives approval to sell the bonds.
- SBOF works with the Financial Advisor and bidding agency to prepare for the competitive sale.
- SBOF alerts State Treasurer's Office of the bond sale and requests an account to receive the good faith deposits from the bidders.

Types of Bond Sales

11

- Competitive sale
 - ✦ Lowest interest rate bid from underwriter (most common)
- Negotiated sale
 - ✦ Pre-negotiated terms with underwriter
- Private placement
 - ✦ Sold directly to investors/ bond holders

History of Severance Tax Bonding

12

- 1973 → creation of the ST Permanent Fund (STPF)
- Paid by mineral extraction industries on the value of resources (includes oil & natural gas)
- Taxes to TRD → ST Bonding Fund (STBF)
- Funds in the STBF pays debt service payments
 - January (interest only)
 - July (principal and interest).
- 1999 → creation of the Supplemental STB to pay for public school facility improvements.
- Severance Tax Bonds are issued annually - June

Severance Tax Bonding Capacity

13

- In FY16, Senior STBs debt service could be paid with 49.4% of the *lesser of* prior or current fiscal year STBF revenue.
- *Currently, phased down to 47.6% for FY19 and beyond.*
- In FY16, Senior and Supplemental STBs were issued where debt service could be paid with 94.4% of the lesser of prior or current fiscal year STBF revenue.
- *Currently, phased down to 91% for FY19 and will continue to phase down to 86.2% for FY22 and beyond.*

Bonds or Notes?

14

- Bonds - term over one year
- Notes - term less than a year
 - severance tax notes are often called “sponge notes.” because they sponge up the cash after bond capacity
 - issued twice a year - December and June
 - 9% of STB capacity is allocated by statute for water projects through the WTB
 - 4.5% for CIB projects
 - 4.5% for TIB projects.



Four Types of Severance Tax Bonds

15

	Senior	Supplemental
Long Term Bonds	<ul style="list-style-type: none"> -Various Capital Projects (Legislative) -Tax-Exempt (Must Exclude Projects with Private Use and be for Capital Purposes) -Sold Competitively (Typically in June) -10-Year Bonds -Projects Authorized by Legislature 	<ul style="list-style-type: none"> -Public Schools Capital Projects -Tax-Exempt or Taxable -Sold Competitively (Issued Infrequently) -10-Year Bonds -Projects Certified by Public School Capital Outlay Council
Short Term "Sponge" Notes	<ul style="list-style-type: none"> -Various Capital Projects (Legislative, Water - Trust Board, Colonias, Tribal) -Taxable (Allows projects with Private Use and Non-Capital Purposes) -Sold to State Treasurer each June and December -1-2 Day Notes ("Pay As You Go") -Projects Authorized by Legislature 	<ul style="list-style-type: none"> -Public School Capital Projects -Taxable -Sold to State Treasurer each June and December -1-2 Day Notes ("Pay As You Go") -Projects Certified by Public School Capital Outlay Council

Capital Outlay Delays

16

- Grantee will not be able to encumber 5% of the funds within 6 months of bond issuance
 - OR expend 85% of the funds within 3 years of bond issuance
- Grantee did not *accurately* fill out a questionnaire requesting the funds
- Grantee states the funding is not sufficient to complete the project or a functioning phase

Capital Outlay Delays Continued

17

- Constitutional anti-donation issues
 - project operated by a private or non-profit entity but fair market rent or services in lieu of cash rent has not been established through an agreement with monthly or quarterly reporting requirements
- Grantee receiving the appropriation does not own the site
- Grantee not compliant with the State Audit Act and Executive Order 2013-006
- Federal tax issues

SBOF General Obligation Bonds

18

- Projects identified by legislature (even years)
- Issuance of the bonds every 2 years (odd years)
- Tax-exempt bonds
- Paid by the statewide mill levy added to property taxes
- Use is higher education, senior, library and public safety projects
- Capacity limited to 1% statewide net taxable property value (minus existing debt service)
- Debt service payments:
 - March (principal and interest)
 - September (interest only)

Questionnaires

19

Why?

- Provides *accurate* assurances that the proposed projects comply with federal and New Mexico laws and rules.
- SBOF must verify that project is ready to move forward.

Please fill in the Questionnaire (Every Question) by the deadline, otherwise your project will not be included in the bond.

Questionnaires

20

You must answer ALL questions on the Questionnaire. Some key questions and why we need to know:

How will the bond proceeds be used for the project?

- SBOF requires that bond proceeds be used for capital projects.
- If the project has taxable issues, generally it cannot be included in the tax-exempt bond issuance, however it may possibly be issued in a note.

Who will own the property or equipment to be funded by the bond proceeds?

- SBOF must obtain assurances that the property or equipment will not be owned by a private or non-profit entity.
- The anti-donation clause in the NM Constitution generally prohibits the use of public funds to benefit a private entity.

Questionnaires

21

Who will lease, operate or use the property or equipment to be funded by the bond proceeds?

- If a private entity is leasing, operating or using the property or equipment, SBOF must review the agreement to confirm there are no anti-donation or federal tax law violations.

If a private or non-profit organization will lease or operate the property or equipment, provide a copy of the lease or operating agreement.

- SBOF must verify that; the property or equipment will not be owned by a private entity, check for anti-donation violations and make sure the agreement is valid.
- Leases of real property to a private entity for a value of \$25,000 or more (over the term of the lease) and or a term of 5 years or more, must have SBOF approval to be legal.

Questionnaires

22

Will the general public have access to and use of this project, OR does the project fulfill a governmental function?

- SBOF must determine there is a benefit to the public. Maybe the project is not open to everyone, but it serves a government function. For example a school, senior center, public safety building or equipment.

Will any private or non-profit or the federal government make any payments to the public entity for the use of the project?

- This question is directed at NM state law principles relating to anti-donation and also federal tax law principles of private payment.

Within 6 months, will you be able to enter into one or more contracts with vendors to expend at least 5% of the proceeds?

Will at least 85% of the bond proceeds be expended in 3 years?

- Treasury Regulations, Section 1.148-2(e)(2)(i)(B) with regards to tax-exempt bonds require that 5% of the bond proceeds are spent or committed within 6 months and 85% within 3 years.

Questionnaires

23

Including the currently available funding sources, is the amount of this funding request sufficient to complete the project or a well defined phase of the project?

- SBOF must obtain assurances that your project is ready and that the funds from the bond proceeds are enough to complete the project or at least a functioning phase of the project.
- If the project is not ready to move forward, then SBOF is paying interest on the bond funds that are sitting idle.

Please fill in the Questionnaire by the deadline, otherwise your project will not be included in the Bond.

Questions

24

If you have questions or would like further information, please contact:

Donna Maestas

Donna.Maestas@state.nm.us

505-827-3936

For questions about draws and Questionnaires:

Sharon Romero

Sharon.Romero@state.nm.us

505-827-3886

www.nmdfa.state.nm.us/Board_of_Finance.aspx