



Delegation of Approval Authority – Allows Public Bodies to Delegate Bond Approval Authority while Enhancing Process Scrutiny

Who would benefit:

- All bond issuers in the State including the Finance Authority

What are the Pros to Delegation:

- Brings New Mexico into conformity with muni market & other states
- Puts bond sale focus on market rather than on board meeting dates
- Designees are part of sale process so decisions are more informed
- Efficient use of time – eliminates “rubber stamp” special meetings
- Removes pricing premium on NM issues for delayed approval risk
- Enables those involved in price and term setting – bond counsel, disclosure counsel (for Official Statement), pricing desks of senior and co-managers, financial advisors, staff – to receive immediate decision maker feedback thus increasing process efficiency
- Makes collusion and fraud at key decision points a riskier proposition

What are the Cons to Delegation:

- Delegation of authority can provide the illusion of loss of control
- Designees may have less financial sense than a board as a whole
- If majority of a board is colluding with underwriters over the selection of designees to inflate pricing for kick back purposes, minority cannot object to results until after final bond approvals

What are the Over Arching Safeguards:

- Parameters set in public meetings determine what can be approved
- Bond counsel will not allow closing to take place outside parameters
- Designees report back results in a public meeting
- Entities are not required to delegate authority
- Governing bodies can inhibit fraud and ensure the best terms by following good practices: use competitive RFP underwriter selection for negotiated sales or engage in electronic competitive sales or use NMFA; employ well-respected financial advisors and counsel chosen by RFP; put focus on parameter setting and POS approvals

Bill Summary (1) – Per Bond Counsel

- Allows a public body to delegate authority to sign a contract for the purchase of public securities or to accept a bid for public securities
- Delegation is limited to members, officers or employees of the public body having a key role in the sale of bonds such as the CEO and CFO
- Delegation requires a public body to pass a resolution, ordinance or other official action – delegation can be revoked before a bond sale
- An official action containing delegation authority must establish conditions and parameters for specific bond sales and the delegate can only approve a bond sale if the sale terms are within those parameters
- The terms and conditions that can be delegated by a public body are limited to those specified in the legislation
- Delegation authority is limited to 6 months or less and to a specific bond sale or sales as determined by the public body

Bill Summary (2) – Per Bond Counsel

- Requires the public officials to whom authority is delegated to certify in writing that the terms and details of the public securities comply with the conditions and parameters established by the public body in the resolution or ordinance
- Requires the public officials be held accountable and to report the final terms to the public body in a timely manner at a public meeting
- Includes the New Mexico Finance Authority in the definition of public body

Bill Administrative and Compliance Impact – Per Bond Counsel

- Requires monitoring of expiration of delegation period and required formal report to the public body
- Does not require special meetings
- No Fiscal Impact