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Comptroller

Tennessee State Funding Board Guidelines

Blanket Exemption Under the Anti-Kicking the Can Act (PC 766, Acts of 2014)

- A. Indebtedness requiring comptroller approval as balloon indebtedness pursuant to Tenn. Code Ann. § 9-21-133 shall be exempt from such required approval for any indebtedness that is evidenced by a loan with either the:
1. United States Department of the Environmental Protection Agency (EPA); or
 2. State of Tennessee’s Clean Water and Drinking Water Revolving Loan Programs.
- B. Indebtedness requiring comptroller approval as balloon indebtedness pursuant to Tenn. Code Ann. § 9-21-133(d) triggered by Tenn. Code Ann. § 9-21-133(b)¹ shall be exempt from such required approval only if the following requirements are met by that debt obligation:
1. The date(s) on which the debt holder has the option to require the issuer to take back the debt obligation (whether through early payoff, placement with another holder, or refunding) shall not occur earlier than four (4) years from the date of issuance.
 2. The written evidence of the debt obligation clearly discloses in boldface, plain English that the local government² may be required to either pay in full or refund the outstanding amount on a certain put date or dates and the local government may also be required to incur additional expenses related to the prepayment or refunding of the debt (i.e. costs of issuance).
 3. The written evidence of the debt obligation must include a provision that requires the debt holder to provide written notice of intent to exercise the put option to the local government at least one hundred and twenty (120) days prior to the put date.

¹ T.C.A. § 9-21-133(b) states “For purposes of this section, principal of debt will be treated as being payable or amortized upon its stated maturity, upon any mandatory redemption date, and upon any date on which the holder of the debt has the option to require the debt to be prepaid, redeemed, or purchased, other than with the proceeds of a liquidity facility provided by a third party.”

² “Local government” includes the concept of local government instrumentality.

4. The written evidence of the debt obligation must require that if the local government is unable to pay any amount in full at a put date and no subsequent holder can be determined, the local government will refund the debt obligation in the following manner:
 - a. The final maturity of the refunding debt obligation will not extend beyond the final maturity of the original debt obligation;
 - b. The debt service structure of the refunding debt obligation will be substantially similar to or more declining than the original debt structure; and
 - c. The local government shall submit a plan of refunding to the comptroller or the comptroller's designee.
5. In the authorizing action or resolution, the governing body of the local government intending to enter into this type of debt obligation must find that the repayment structure is in the public interest and shall state that it is aware of the risks and benefits associated with the proposed transaction, that it is willing to pay any additional costs associated with subsequently required refunding debt, and that it understands its obligation to submit a plan of refunding. If the local government has retained an independent municipal advisor (i.e. registered with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board) to evaluate the risks and benefits of the proposed transaction, the action or resolution shall so state. If the governing body has not retained an independent municipal advisor, the action or resolution shall state that the governing body acknowledges that the proposed lender does not owe a fiduciary duty to the local government, that the proposed lender is acting for its own business and commercial interests, and that the governing body has consulted with such advisors and experts as it deems appropriate before entering into the authorizing action or resolution.
6. If the local government has entered into a continuing disclosure obligation with respect to outstanding debt, or during the term of the debt obligation enters into such an obligation with respect to debt, the local government shall file promptly with the Municipal Securities Rulemaking Board's EMMA the basic documentation relating to the debt obligation including the authorizing action or resolution and any financing agreements.
7. In connection with the filing of the Report on Debt Obligation with both the governing body and with the Office of the Comptroller of the Treasury, the local government shall prepare and attach a cumulative repayment schedule required by #10 of that form assuming the option referenced in Paragraph 1 above is exercised on the earliest date. The local government shall additionally attach a certification of compliance with the requirements of this exemption [and attaching the authorizing action or resolution and the minutes for the meeting at which it was approved.]

*Approved by the State Funding Board at its meeting held on December 16, 2014.
Amended by the State Funding Board at its meeting held on November 28, 2022.*