

5:30-2

LOCAL FINANCE BOARD - LOCAL BOND LAW

5:30-2.1 Exceptions to debt limitation of N.J.S.A. 40A:2-7

When a local government seeks a waiver from the debt limitations of N.J.S.A. 40A:2-6 for a bond ordinance authorizing obligations solely for the purposes delineated in N.J.S.A. 40A:2-7, the application must be submitted to the Local Finance Board within the established filing schedule on a form approved by the Board. Approval of bond and note financing in excess of the debt limit under N.J.S.A. 40A:2-7(c), (d) and (e) require the applicant to justify and demonstrate the existence of extraordinary conditions.

5:30-2.2 Automatic waiver of appearance

An appearance by the applicant before the Board for applications for the waiver of down payment shall not be required for the following State loan programs: Green Acres and the New Jersey Historic Trust Revolving Loan Fund in the Department of Environmental Protection, Transportation Trust Fund Authority Act in the Department of Transportation, and the Unsafe Buildings Demolition Loan Fund in the Department of Community Affairs. A full application with supporting documentation shall be required and a vote of the Board shall be taken. An appearance shall only be required when requested by the Board.

5:30-2.3 Payments for capital improvement

- a) When N.J.S.A. 40A:2-11 requires local governments to appropriate a down payment which is not less than five percent of the amount of obligations authorized for each bond ordinance, the down payment must have been made available prior to final adoption of the bond ordinance from any combination of the following sources:
 1. Reserve funds in the capital improvement fund accumulated from annual budget appropriations;
 2. Current budget appropriation; and/or
 3. Emergency appropriation.

- b) Moneys accumulated in the capital improvement fund from annual budget appropriations may be utilized to fully fund the acquisition of capital items without the issuance of bonds.

- c) Capital improvement fund moneys may be expended for preliminary costs of capital projects, such as engineering and architect fees, by a resolution of the governing body.
- d) All moneys expended from the capital improvement fund other than those permitted for preliminary costs shall be made by an appropriation through an adopted ordinance.
- e) All expenditures from a capital surplus account, from a capital reserve set aside for a specific capital purpose, or from a capital improvement fund other than those expenditures permitted for preliminary expenses, shall be made by means of an ordinance appropriation duly adopted by the municipality or county, which ordinance shall become effective upon advertising following final adoption in the manner required by statute.

5:30-2.4 Form of Notice of Pending Bond Ordinance and Summary publication

- a) Pursuant to N.J.S.A. 40A:2-17.b, a local unit may choose to publish a bond ordinance in summary form and shall use the following form of summary of bond ordinance and notice of adoption:

NOTICE OF PENDING BOND ORDINANCE AND SUMMARY

The bond ordinance, the summary terms of which are included herein, was introduced and passed upon first reading at a meeting of the governing body of the _____ of _____, in the County of _____, State of New Jersey, on _____, 20___. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held at the _____, in the _____ on _____, 20__ at _____ o'clock ___M. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the Clerk's office for the members of the general public who shall request the same.

The summary of the terms of such bond ordinance follows:

- Title:
- Purpose(s):
- Appropriation:
- Bonds/Notes Authorized:
- Grants (if any) Appropriated:
- Section 20 Costs:
- Useful Life:

_____, Clerk

This Notice is published pursuant to N.J.S.A. 40A:2-17.

BOND ORDINANCE STATEMENTS AND SUMMARY

The bond ordinance, the summary terms of which are included herein, has been finally adopted by the _____ of _____, in the County of _____, State of New Jersey on _____, 20__ and the 20 day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law, has begun to run from the date of the first publication of this statement. Copies of the full ordinance are available at no cost and during regular business hours, at the Clerk's office for members of the general public who request the same. The summary of the terms of such bond ordinance follows:

Title:

Purpose(s):

Appropriation:

Bonds/Notes Authorized:

Grants (if any) Appropriated:

Section 20 Costs:

Useful Life:

_____, Clerk

Amended by R.2023 d.094, effective August 7, 2023.

5:30-2.5 Refunding of bonds meeting certain conditions

- a) Notwithstanding the approvals and consents required of the Local Finance Board in connection with the authorization, sale, and issuance of refunding bonds pursuant to N.J.S.A. 40A:2-51 et seq. or 18A:24-61 et seq., any municipality, county, or school district meeting all of the conditions set forth below, may authorize and issue refunding bonds, including by adoption of any refunding bond ordinance or resolution in connection therewith, to refund long term debt without prior approval of the Local Finance Board, where the issuance of those refunding bonds realizes debt service savings on the outstanding obligations, provided all of the following conditions are present:
1. The present value savings is at least three percent;
 2. The new debt service shall be structured, such that no annual debt service payment is more than it was under the original debt service schedule;
 3. The final maturity of the refunding bond does not extend past the budget year in which such final maturity was originally scheduled to mature; and

4. The debt savings are substantially level across the life of the refunding.
- b) The municipality, county, or school district shall, within 10 days of the closing on the refunding bond sale, file with the Local Finance Board a comparison of the initial and refunding debt service schedule showing annual present value savings; a summary of the refunding; an itemized accounting of all costs of issuance; a certification from the chief financial officer for a municipality or county, or the school business administrator or board secretary for a school district, that all of the conditions of this section have been met; and that a resolution, pursuant to N.J.S.A. 40A:2-51(c) or 18A:24-61.5(b), as appropriate, passed by two-thirds of the full membership of the governing body or board of education allowing for the refunding.

5:30-2.6 (Reserved)

5:30-2.7 Request for determination of period of usefulness

- (a) As used in this section, the terms set forth below shall have the following meanings:
 1. “Capital improvement” means any of the following:
 - i. Development of land;
 - ii. Acquisition, construction, improvement, rehabilitation, and/or renovation of buildings, roads, structures, facilities, and infrastructure; or
 - iii. Major repairs, reconditioning, or overhaul that meaningfully extends the useful life of an existing capital asset.
 2. “Property” means real property, or personal property of a substantial nature, such as vehicles or major equipment.
- (b) For any capital improvement or property with a useful life of five years or more that is not included at N.J.S.A. 40A:2-22, a municipality or county may request that the Director of the Division of Local Government Services in the Department of Community Affairs determine a period of usefulness for the same, provided that no law, including the Local Bond Law, expressly prohibits the authorization of obligations for the capital improvement or property. Any request to the Director shall:
 1. Identify the subject capital improvement or property;
 2. Request a useful life determination of not less than five years, but not more than 15 years;
 3. Provide a certification from an engineer, architect, or other appropriate professional that the physical useful life of the capital improvement or property meets, at a minimum, the period of usefulness being requested, including such supporting documentation and other information as may be required by the Director;

4. State whether the issuance of an obligation for the capital improvement or property would require Local Finance Board approval; and
5. Supply such other information, as may be required by the Director.

(c) Once the Director issues a period of usefulness determination regarding property or a capital improvement, the Director may make said determination applicable to all municipalities and counties upon publication of a notice in the New Jersey Register. If the Director's useful life determination has been published in the New Jersey Register, a municipality or county may only submit a request for a determination for the same capital improvement or property if the request is readily and clearly distinguishable from the published determination.

New Rule, R.2023 d.094, effective August 7, 2023.

5:30-2.8 Self-liquidating improvements and extensions

- a) Obligations to finance an improvement or extension of a municipal public utility shall be deemed to be for a self-liquidating purpose in the fiscal year in which the obligations to finance the same have been authorized or issued and calculated pursuant to N.J.S.A. 40A:2-8.
 1. In instances that a local unit desires to establish a utility, and desires the Local Finance Board to determine that any debt would be self-liquidating and, therefore, the debt excluded from the net debt of the local unit, the local unit shall provide appropriate supporting documentation to indicate the utility shall be self-liquidating.
 2. Such documentation shall include, as appropriate to the circumstances, the following:
 - i. The amount of cash on hand based on prepaid service revenue;
 - ii. Presentation of evidence of participation or connection supported by enforceable documents guaranteeing every pledge or agreement;
 - iii. An engineering or other study of annual income from casual, or ancillary use of the facility with adequate reasons for supporting such estimate;
 - iv. Statement of amount estimated to be derived from any concessions, other recreational activities, or other activities, with suitable explanation;
 - v. Projected budget for the first full year of operations, setting forth the amounts required for salaries and wages, insurance, detail of other operating expenses, and amounts required for annual debt service;
 - vi. Statement in the application that adequate liability insurance will be carried in an amount adequate for the protection of the public and the local unit, with a certification by some local municipal official that the coverage appears to be adequate, based on the best information obtainable;

- vii. Statement to the effect that any determination of self-liquidation is subject to the provisions of N.J.S.A. 40A:4-35 which requires any annual deficit to be provided for the next annual municipal budget and the next debt to be computed according to the provisions of N.J.S.A. 40A:2-48;
 - viii. A statement setting forth any covenant to be included in any bond issue in order to insure the purchaser that the bonds will be met at maturity regardless of the income from the utility.
3. All of the provisions of (a) 2 above shall be in addition to or part of the formal application in the form required by the Local Finance Board for municipal extensions of credit.
 4. The Board will, after receiving each application, set a date for public hearing thereon and will, if it is deemed necessary, require the presentation of any supplemental or additional detail deemed to be in order.
 5. Any governing body, may, if it has adequate unencumbered borrowing power, undertake a project of this nature without the approval of the Local Finance Board, assuming that it is willing to have the prospective indebtedness included in the net debt of the municipality. In an instance of this kind, the municipality could, assuming that the first full year's operations of the project did in fact produce sufficient cash revenues to meet all operating expenses and debt service charges, secure a deduction in the annual debt statement required to be filed at the end of the year or any subsequent year. It would follow, of course, that if the income in any instance was inadequate to meet operating expenses and debt service, it would be necessary to take the charge against the net debt as required by N.J.S.A. 40A:2-48.

5:30-2.9 Submission of electronic proposals for sale of bonds

- a) Local units (including municipalities, counties, authorities and fire districts) planning to issue bonds may receive proposals for the competitive or negotiated sale of such bonds through an open or closed electronic auction managed by a nationally recognized electronic securities bidding service. For the purposes of this section, a closed auction includes the submission of electronically sealed bids that are opened at a set time and an open auction is where bidders submit bids against each other in real time.
- b) Requirements that bidders be members of the National Association of Security Dealers, have a business relationship with the Depository Trust Corporation, or require

participation in a similar financial industry-based program shall not be construed as limiting competition.

Amended by R.2023 d.094, effective August 7, 2023.

5:30-2.10 Use of financial surety bonds in electronic bond sale auctions

- a) Subject to the requirements of this section, a local unit may accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as a bid deposit as required by N.J.S.A. 40A:2-32(a).
- b) The financial surety bond must be provided by an insurance company or other guarantor that is licensed and authorized to do business in the State of New Jersey. Applicants shall possess the requisite financial capability and experience in issuing financial surety bonds to guarantee a bid deposit on the sale of government securities and further, that they possess the capability to respond to requests for the provision of financial surety bonds in a timely and secure manner for the use of bidders who seek to purchase local unit securities.
- c) Acceptance of a financial surety bond by a local unit shall be subject to the following conditions:
 1. Financial surety bonds shall be made payable to the order of the issuing local unit in order for a bid to be considered;
 2. The requirement or option to use a financial surety bond in the bond sale shall be included in the notice of sale of the bonds;
 3. Proof of the financial surety bond must be submitted to the local unit or its agent by a fixed time on the day prior to the opening of the bids;
 4. Each financial surety bond must identify the bidder whose deposit is guaranteed by the financial surety bond, and shall state the time and date when it will expire. Said date shall not be earlier than the date for submission of the required deposit;
 5. The notice of sale of the bonds shall require the successful bidder using a financial surety bond to submit its deposit to the local unit in such form and a time required by the local unit which shall be no later than 48 hours of the award of the bonds;
 6. If such deposit is not received by the stated time to satisfy the deposit requirement, the local unit may draw the financial surety bond;
 7. The deposit of the successful bidder will be applied to the purchase price of the bonds and no interest will be paid thereon; and

8. The local unit shall retain the deposit as liquidated damages should the bidder fail to comply with the terms of the bid.

Amended by R.2023 d.094, effective August 7, 2023.

5:30-2.11 through 5:30-2.19 (Reserved)