

Borrowing Alternatives for Illinois Counties

The purpose of this memorandum is to summarize the borrowing alternatives available to Illinois counties. Under current law, such borrowings are governed by the provisions of the following laws:

- (1) the Counties Code of the State of Illinois, as amended (the “*Counties Code*”);
- (2) the Local Government Debt Reform Act of the State of Illinois, as amended (the “*Debt Reform Act*”);
- (3) the Property Tax Extension Limitation Law of the State of Illinois, as amended (the “*Extension Limitation Law*”);
- (4) the Bond Issue Notification Act of the State of Illinois, as amended (the “*BINA*”);
- (5) the Local Government Debt Limitation Act of the State of Illinois, as amended (the “*Debt Limitation Act*”); and
- (6) the Internal Revenue Code of 1986, as amended (the “*Tax Code*”), and the arbitrage and rebate regulations promulgated thereunder (the “*Federal Regulations*”).

Compliance with Illinois law is necessary for the borrowing to be valid and legally binding. Compliance with the Tax Code and the Federal Regulations is necessary for the interest on the borrowing to be exempt from federal income taxation.

General Provisions

Pursuant to Section 1 of the Debt Limitation Act, the general statutory *debt limit for counties with a population under 500,000* is 2.875% of the county’s equalized assessed valuation. However, Section 1.10 of the Debt Limitation Act provides that debt incurred for the purpose of building county courthouses, jails and other necessary county buildings and for the purpose of providing furniture, rooms and offices for the county circuit court, county board, state’s attorney, county clerk, county treasurer, recorder, sheriff and clerks of court may be issued without regard to the 2.875% debt limit. Tax anticipation warrants, general obligation warrants (except for refunding obligations issued pursuant to the Debt Reform Act), tax anticipation notes, personal property replacement tax notes, revenue anticipation notes, revenue bonds and, generally, alternate bonds do not count against the debt limit of a county; but general obligation bonds (other than, generally, alternate bonds), installment contracts, leases, debt certificates and judgments, unless issued or incurred for the purposes described above, do count against the 2.875% debt limit.

Under certain circumstances, counties are subject to another statutory debt limitation. Pursuant to Section 5-1012 of the Counties Code, a county is authorized to issue *referendum-approved bonds* when the county board deems it necessary to issue such bonds in order to enable the county board to perform any duties imposed upon it by law, so long as the amount of the bonds does not exceed, including the then-existing indebtedness of the county, 5.75% of the county's equalized assessed valuation. In any county bond issue, the county needs to comply with either or both of the applicable statutory debt limitations.

Under Section 6 of the Debt Reform Act, whenever a county is authorized to issue bonds (defined in the Debt Reform Act to include any instrument evidencing the obligation to pay money) without referendum, it may add issuance costs (including underwriter's discount, bond insurance or other credit enhancement costs) to the estimated costs of the project and may pay such costs from bond proceeds.

Section 9 of the Debt Reform Act allows a county to use bond proceeds to pay capitalized interest on its bonds for a period not to exceed the greater of: (1) two years or (2) a period ending six months after the estimated date of (a) completion of the acquisition or construction of the project or (b) accomplishment of the purpose for which the bonds are issued. The county board may provide for such capitalized interest in the ordinance authorizing the bonds.

Section 10 of the Debt Reform Act permits counties to sell bonds at a discount. Whenever bonds are sold at a discount, the bonds must be sold at a price and bear interest at such rate or rates so that either the true interest cost (yield) or the net interest rate received upon the sale of the bonds does not exceed the maximum rate otherwise authorized by applicable law. There is no requirement that the sale of bonds by a county be competitive.

In some cases, the Counties Code limits the amount of bonds that a county may issue for a particular purpose. Issuance costs, capitalized interest and underwriter's discount, if financed out of bond proceeds, count against the limits imposed by applicable law and decrease the amount of proceeds available for a project.

Section 16 of the Debt Reform Act provides that counties are authorized to file a tax levy for the payment of debt service on general obligation or limited bonds at any time prior to March 1 of the calendar year during which the tax will be collected. County clerks are required to accept the filing of such tax levy prior to March 1 notwithstanding that such filings occur after the end of the calendar year next preceding the calendar year during which the tax was levied. In extending taxes for general obligation bonds, the county clerk must add to the levy for debt service on such bonds an amount sufficient, in view of all losses and delinquencies in tax collection, to produce tax receipts adequate for the prompt payment of such debt service.

Under Section 17.5 of the Debt Reform Act, whenever the authorization of or the issuance of bonds is subject to either a *referendum* or a *backdoor referendum*, the approval, once obtained, remains for (a) five years after the date of the referendum or (b) three years after the end of the petition period for the backdoor referendum.

Section 7 of the Bond Authorization Act of the State of Illinois, as amended, allows a county whose aggregate principal amount of bonds outstanding or proposed exceeds \$10,000,000 to enter into agreements for *interest rate swaps* and other interest rate risk management tools with respect to any issues of its bonds. The bonds must be identified to the interest rate swap. Net payments under swap agreements are treated as interest for the purpose of calculating the interest rate limit applicable to the bonds, *provided*

that, for this purpose only, the bonds are deemed to bear interest at taxable rates. Swap agreements and the payments to be made thereunder do not count against the debt limit of a county.

In connection with the issuance of its bonds, a county may enter into an agreement to provide additional security or liquidity, or both, for the bonds ("*Credit Agreement*"), including municipal bond insurance, letters of credit, lines of credit, standby bond purchase agreements and surety bonds. A county may also enter into an agreement for the purchase or remarketing of its bonds ("*Remarketing Agreement*") to provide a mechanism for remarketing bonds tendered for purchase. The term of the Credit Agreement or Remarketing Agreement may not exceed the term of the bonds, plus any time period necessary to cure any defaults under the agreements.

A *credit rating* of county debt by one or more of the New York rating agencies, Fitch Ratings, Inc., Moody's Investors Service, Inc. or S&P Global Ratings, is not legally required to issue bonds, but a favorable rating may reduce the interest rate paid by a county on its debt. The rating agencies review the overall management, debt, economic and financial picture of the county, including recent audits and fund balances. *Bond insurance* may also reduce the interest rate paid by a county on its debt.

Under Section 265(b)(3) of the Tax Code, banks and certain other financial institutions are not allowed any deduction for interest expense attributable to tax-exempt debt acquired after August 7, 1986, unless the "*small issuer exception*" applies. If a county will not issue more than \$10,000,000 of tax-exempt debt during the calendar year and it designates the debt as a "qualified tax-exempt obligation" pursuant to said Section 265(b)(3), the restriction on the deduction for interest expense does not apply.

[Bond Issue Notification Act](#)

The BINA requires a county board proposing to sell non-referendum general obligation bonds or limited bonds (other than refunding bonds) to hold at least one public hearing concerning the county's intent to sell such bonds. The county clerk must publish notice of the public hearing at least once in a newspaper of general circulation in the county not less than seven and not more than 30 days before the date of the public hearing and must post notice of the public hearing at the principal office of the county board at least 48 hours before the public hearing. Such notice must be continuously available to the public. The notice must appear above the name or title of the county clerk. At the public hearing, the county board must explain the reasons for the proposed bond issue and permit persons to present written or oral testimony. The county board must then wait at least seven days following final adjournment of the public hearing before adopting the ordinance or resolution providing for the sale of the bonds.

[Limited Bonds](#)

Counties subject to the Extension Limitation Law and commonly referred to as being "tax-capped" are permitted to issue limited bonds. Limited bonds are issued in lieu of general obligation bonds that otherwise have been authorized by applicable law. They are payable from a separate property tax levy that is unlimited as to rate, but the amount of taxes that will be extended to pay the bonds is limited by the Extension Limitation Law. Limited bonds are payable from a county's debt service extension base (the "*Base*"), which is an amount equal to that portion of the county's extension for the applicable levy year for the payment of non-referendum bonds (other than alternate bonds or refunding bonds issued to refund bonds initially issued pursuant to referendum) increased each year, beginning with the 2009 levy year, by the lesser of 5% or the percentage increase in the Consumer Price Index for All Urban Consumers during the 12-month calendar year preceding the levy year.

Tax-capped counties may only issue non-referendum general obligation bonds as limited bonds. To the extent that a county, under current law, does not have a Base that would otherwise enable it to levy taxes to pay debt service on non-referendum bonds for the size and scope of a project the county wants to undertake, the county may establish or increase a Base pursuant to referendum in accordance with the Extension Limitation Law.

Borrowing Alternatives For Capital Projects

Federal Regulations generally permit the proceeds of borrowings for capital projects to be invested without any restriction as to yield for three years after the issuance of the bonds, so long as the county reasonably expects to proceed with due diligence to spend the proceeds within such three-year period. In addition, the county must enter into a substantially binding commitment to spend at least 5% of the bond proceeds within six months after the issuance of the bonds and must proceed with due diligence to complete the project.

Federal Regulations restrict the ability of a county to use bond proceeds to reimburse itself for expenditures incurred prior to the issuance date of the bonds, unless the county, in compliance with the Federal Regulations, formally declares its intent to reimburse itself for such expenditures with the proceeds of the bonds. Preliminary expenditures (*e.g.*, architectural, engineering, surveying, soil testing and similar costs, but not including land acquisition or site preparation costs) may be reimbursed without a formal declaration of intent so long as such preliminary expenditures do not exceed 20% of the bond proceeds.

Section 148(f) of the Tax Code requires counties to rebate to the United States Treasury an amount equal to the sum of (a) the excess of (i) the amount earned on bond proceeds over (ii) the amount which would have been earned if such proceeds had been invested at the bond yield, plus (b) any income attributable to such excess. If this rebate requirement is not met, the bonds will be arbitrage bonds and the interest on the bonds will not be tax-exempt. However, arbitrage earnings need not be rebated to the United States Treasury if the expenditure of bond proceeds meets certain spend-down requirements or if the county does not issue more than \$5,000,000 of tax-exempt obligations in the calendar year in which the bonds are issued.

General Obligation Bonds

Counties have the authority to issue general obligation bonds to finance a variety of capital projects. General obligation bonds are bonds for which a county has the power to levy taxes on the equalized assessed valuation of all taxable property in the county. These taxes can be levied without limit as to rate or amount, or may be restricted to a particular rate or amount or both. Under Section 11 of the Debt Reform Act, general obligation bonds can be refunded by revenue bonds, but general obligation bonds cannot refund revenue bonds or alternate bonds (unless permitted by applicable law). General obligation bonds can be either referendum or non-referendum bonds.

Referendum-approved general obligation bonds are bonds that require the approval of the voters in a county and are secured by a levy of a direct annual tax on all taxable property in the county. Depending on the statute under which the bonds are issued, these taxes can be levied without limit as to rate or amount or may have to be restricted to a particular rate.

Pursuant to Section 5-1012 of the Counties Code, when the county board deems it necessary to issue referendum bonds, the county board must enter an order of record specifying the amount of bonds required and the purpose for which such bonds are to be issued. The county board certifies the question of issuing

the bonds to the applicable election authority who submits the question to the voters at any election in accordance with the general election law.

Pursuant to Section 5-2001 of the Counties Code, if the bonds will be paid from property taxes which will exceed the taxes that are authorized to be levied by the county board without referendum, the county board must, by an order entered of record, set forth substantially the amount of such excess required, the purpose therefor and the number of years the excess will be required to be levied; additionally, the county board must provide for the submission of the question of assessing the additional tax rate to the voters at the next election for county officers. The county board then certifies the question to the proper election authority who submits the proposition at a general election in accordance with the general election law.

If a county board decides to (1) issue referendum bonds and (2) levy a tax therefor in excess of the statutory limits, then the county board may submit both questions to voters at the same election and may include both questions in one ballot proposition.

Generally, counties have the authority to issue general obligation bonds in order to enable them to perform any of the duties imposed upon them by the Counties Code and other applicable law. In most cases, this general statutory authority enables counties to issue general obligation bonds to finance projects and facilities that further county purposes, which include providing for county hospitals, county nursing homes, county health departments and county roads. In addition, counties have specific statutory authority to issue general obligation bonds for particular projects. The following is a summary of certain referendum and non-referendum bonds authorized by the Counties Code and other applicable law and organized by the type of capital project being financed.

County Courthouses

- Courthouse bonds for counties under 300,000 in population may be issued if approved by referendum. Pursuant to Section 6-4010 of the Counties Code, the bonds may be issued for the reconstruction and remodeling of an existing courthouse or the construction of a new courthouse and related facilities at the same or a new location, and for the acquisition of land and fixtures for the courthouse and related facilities. The bonds are secured by a levy of a direct annual tax on all taxable property in the county without limitation as to rate or amount.
- Bonds for the construction or remodeling of county courthouses in counties with more than 300,000 in population and an increase in population of 30% or more from any decennial census to the next such census may be issued, subject to a backdoor referendum and are payable from a tax levied upon all taxable property in an amount not to exceed .05% of the county's equalized assessed valuation pursuant to Division 6-4 of the Counties Code. Issuance of such bonds is subject to approval of the electorate if a petition with signatures of not less than 5% of the registered voters in the county is filed with the county clerk within 28 days following the first publication of the county board resolution providing for the issuance of the bonds. Counties subject to the Extension Limitation Law may issue such bonds as limited bonds.
 - If no sufficient petition is filed and no referendum is therefore required for the approval of the bonds, counties subject to the Extension Limitation Law must issue such bonds as limited bonds. Consequently, in such counties, taxes to pay the bonds would be limited as to amount under the Extension Limitation Law and limited as to rate under the .05% tax rate limit.

- If no sufficient petition is filed and no referendum is therefore required for the approval of the bonds, counties not subject to the Extension Limitation Law may issue the bonds secured by a levy of a direct annual tax on all taxable property in the county unlimited as to amount, but limited as to rate under the .05% tax rate limit.
- If sufficient petitions are filed and the bonds are subsequently approved by referendum, the county may issue the bonds secured by a levy of a direct annual tax on all taxable property in the county unlimited as to amount but limited as to the tax rate under the .05% tax rate limit, regardless of whether the county is subject to the Extension Limitation Law.
- Bonds for the construction or remodeling of county courthouses in counties with more than 300,000 in population but without an increase in population of 30% from any decennial census to the next such census may be issued if approved by referendum pursuant to Sections 5-1012 and 5-1106 of the Counties Code. Such bonds are secured by a levy of a direct annual tax on all taxable property in the county without limitation as to amount but limited as to the maximum tax rate set forth in the ballot proposition.

County Jails

- Bonds to build county jails and sheriffs' residences for counties with less than 80,000 in population may be issued if approved by referendum. The bonds are secured by a levy of a direct annual tax on all taxable property in the county without limitation as to rate or amount pursuant to Section 6-30041 of the Counties Code.
- Bonds to construct, expand or remodel county jails and sheriffs' residences for counties with a population between 80,000 and 500,000 may be issued subject to a backdoor referendum and are payable from a tax levied upon all taxable property in the county pursuant to Section 6-3001 and 6-3003 of the Counties Code. Issuance of such bonds is subject to approval of the electorate if a petition with signatures of not less than 10% of the registered voters in the county is filed with the county clerk within 30 days of the first publication of the resolution adopted by the county board providing for the issuance of the bonds.
 - If no sufficient petition is filed and no referendum is therefore required for the approval of the bonds, counties subject to the Extension Limitation Law must issue such bonds as limited bonds. Consequently, in such counties, taxes to pay the bonds would be limited as to amount under the Extension Limitation Law, but unlimited as to rate.
 - If no sufficient petition is filed and no referendum is therefore required for the approval of the bonds, counties not subject to the Extension Limitation Law may issue the bonds secured by a levy of a direct annual tax on all taxable property in the county without limitation as to rate or amount.
 - If sufficient petitions are filed and the bonds are subsequently approved by referendum, the county may issue the bonds secured by a levy of a direct annual tax on all taxable property in the county without limitation as to rate or amount, regardless of whether the county is subject to the Extension Limitation Law.
- Bonds for the construction or remodeling of county jails for counties between 500,000 and 1,000,000 in population may be issued subject to a backdoor referendum and are payable from taxes levied in an

amount not to exceed .07% of the county's equalized assessed valuation pursuant to Sections 6-3005 and 6-3008 of the Counties Code. Issuance of these bonds is subject to approval of the electorate if a petition with signatures of not less than 10% of the registered voters in the county is filed with the county clerk within 30 days following the first publication of the county board's resolution providing for the issuance of the bonds. Counties subject to the Extension Limitation Law may issue such bonds as limited bonds.

- Bonds for the construction or remodeling of county jails for counties with a population over 1,000,000 may be issued if approved by referendum pursuant to Sections 5-1012 and 5-1106 of the Counties Code. The bonds are secured by a levy of a direct annual tax on all taxable property in the county without limitation as to amount but limited as to the maximum tax rate set forth in the ballot proposition. Home rule counties may issue such bonds payable from a tax unlimited as to rate or amount without referendum.

County Medical Service Facilities

- Medical Service Facility Bonds for counties under 200,000 in population may be issued pursuant to Section 4 of the Medical Service Facility Act, as amended, for the purpose of acquiring, building and equipping medical service facilities within the county to be leased to doctors, if the bonds and the maximum tax rate to pay for such bonds are approved by referendum. The bonds are secured by a levy of a direct annual tax on all taxable property in the county without limitation as to amount but limited as to the maximum tax rate approved by the referendum.

County Juvenile Shelter Care and Detention Homes

- County Shelter Care and Detention Home Bonds may be issued either by referendum or without referendum depending upon how the county adopted the County Shelter Care and Detention Home Act of the State of Illinois, as amended (the "*Juvenile Shelter Care Act*"). The bonds may be issued to acquire or construct a shelter care or detention home for delinquent, neglected, dependent, abused or addicted minors and are payable from taxes levied to pay the same. Pursuant to Section 5 of the Juvenile Shelter Care Act, in order to build such a home, a county with a population of between 300,000 and 1 million can collect a tax not exceeding .04% of the county's equalized assessed valuation; in order to operate the home, a county can collect a tax of .02% of the county's equalized assessed valuation. The taxes collected for such homes may be increased to .10% if approved by referendum.
- Pursuant to Section 5.1 of the Juvenile Shelter Care Act, for counties that have adopted such Act by a majority vote of its electors, bonds may be issued without referendum. Counties subject to the Extension Limitation Law must issue such bonds as limited bonds. Consequently, in such counties, taxes to pay the bonds would be limited as to amount under the Extension Limitation Law and limited as to rate under the tax rate limit discussed above. In counties not subject to the Extension Limitation Law, however, taxes to pay the bonds would be limited as to the tax rate limit discussed above, but unlimited as to amount.

Stormwater Management

- Bonds for stormwater management may be issued without referendum by counties with less than 1,500,000 in population that are located in the area served by the Northeastern Illinois Planning Commission for the purpose of implementing any stormwater plan under Section 5-1062 of the Counties Code. Such bonds are intended to allow counties to manage and mitigate the effects of urbanization on stormwater drainage. Any county, at least part of which has been declared a disaster area by presidential proclamation as a result of flooding after July 1, 1986, may levy an annual non-referendum tax to pay for the bonds. The tax may not exceed .20% of equalized assessed valuation in addition to the other taxes authorized to be levied in the county by law; however, said tax rate may be increased by referendum. Any county that has not been so declared a disaster area by presidential proclamation must submit the question of taxes to referendum for approval before the .20% tax can be levied to pay the bonds. Counties subject to the Extension Limitation Law must issue such bonds as limited bonds. Consequently, in such counties, taxes to pay the bonds would be limited as to amount due to the Extension Limitation Law and limited as to the tax rate described above for these purposes.

County Voting Machines

- Bonds for the purchase of voting machines may be issued without referendum in amounts necessary for counties to acquire voting machines or electronic voting systems in order to comply with general election laws pursuant to Section 5-1027 of the Counties Code. A county may levy a direct annual tax upon all taxable property in the county for the purpose of paying the principal of and interest on such bonds. Such tax is not subject to any statutory limitations relative to taxes that may be extended for county purposes, except that counties subject to the Extension Limitation Law must issue such bonds as limited bonds.

County Highway and Superhighway Projects

- Highway Bonds for counties with less than 1,000,000 in population may be issued to construct, improve or maintain county highways, roads or bridges without referendum pursuant to Section 5-605.2 of the Illinois Highway Code, as amended (the "*Highway Code*"). Such bonds are payable from funds as pledged by the county board; however, the county board has no authority to levy a special property tax for the purpose of paying the bonds. Under the Highway Code, a county is authorized to levy a number of taxes in order to repair, maintain and construct county highways, and said taxes can be pledged by the county board to the repayment of the bonds.
 - *County Highway Tax.* Pursuant to Section 5-601 of the Highway Code, a county may levy a tax to (i) improve, maintain, repair, construct and reconstruct county highways, (ii) pay for lands, quarries, pits or other deposits of road material needed in constructing such highways, (iii) acquire and maintain machinery and equipment and (iv) operate and construct or reconstruct buildings for housing highway offices, machinery, equipment and materials used in the construction, repair and maintenance of the highways. Such tax is in addition to the maximum of all other county taxes that the county is authorized to levy and cannot exceed .10% or the rate limit in effect on July 1, 1967, whichever is greater, of the county's equalized assessed valuation. The tax rate can be increased to .20% if approved by referendum.
 - *Special Tax for County Highways or Assisting Road Districts.* Pursuant to Section 5-604 of the Highway Code, a county may, if approved by referendum, levy a tax for up to five years for the

purpose of (i) constructing or repairing county highways and/or (ii) assisting one or more road districts in the county up to 25% of the cost of the construction or repair of township or district roads. Such tax is in addition to the statutory rate authorized for counties and cannot exceed .0833% of the county's equalized assessed valuation.

- Superhighway Bonds for counties with more than 500,000 in population may be issued without referendum in an amount or amounts not exceeding \$70,000,000 pursuant to Section 5-33001 of the Counties Code. Such bonds can be issued without regard to any statutory rate limitation relative to taxes that may be extended for county purposes, except that counties subject to the Extension Limitation Law must issue such bonds as limited bonds. The county's allotments of moneys from the Motor Fuel Tax Fund of the State of Illinois are deemed additional security for the payment of superhighway bonds. Such moneys must be used to pay principal of and interest on the superhighway bonds and to correspondingly abate the property taxes so levied.

Revenue Bonds

Revenue Bonds are obligations of the county payable solely from the net revenue derived from the financed projects or facilities. The full faith and credit of the county is not pledged for the payment of the bonds. However, in order for any non-home rule county to issue revenue bonds, there must be a revenue source related to the purpose for which the bonds are to be issued and there must be a specific statutory grant of power for the issuance of the bonds. The Counties Code and other acts applicable to counties authorize the issuance of revenue bonds for numerous revenue-producing projects, including the following:

- **Hospital Revenue Bonds** may be issued for the purpose of constructing, repairing, remodeling, extending, improving, equipping or acquiring a site(s) for (a) hospital building(s) pursuant to Section 6-7001 of the Counties Code.
- **Homes for the Aged Revenue Bonds** may be issued to purchase, construct, equip, operate and maintain one or more homes for the aged in accordance with Section 5-22001 of the Counties Code. Any county may refund and refinance such bonds whenever doing so is in the public interest. Federal funds can be used to redeem the bonds in whole or in part.
- **Garbage, Waste and Refuse Revenue Bonds** may be issued in order to furnish, acquire or operate grounds, property or other facilities for the disposal, treatment or recycling of garbage, waste or refuse by sanitary landfill methods or other appropriate technology pursuant to Section 5-1047 of the Counties Code. Any county that has a solid waste management plan or is a signatory to a plan shared by counties or municipalities has the power to require by ordinance, license, contract or other means that all or any portion of solid waste, garbage, refuse and ashes generated within the unincorporated areas of the county be delivered to a regional pollution control facility. Counties can contract with private entities to operate the facility or deliver the waste.
- **Medical Service Facility Revenue Bonds** may be issued to build, purchase, lease or improve any medical or dental office or clinic, including the land, furnishings and equipment necessary for such a site, pursuant to the Medical Service Facility Revenue Bond Act of the State of Illinois, as amended. Such revenue bonds are payable from revenues received by a county from the rental, lease or sale of such facility pursuant to Section 8 of such Act; alternatively, a county may lend the proceeds of the bonds to any person to finance the cost of such facility on terms providing for the repayment of the bonds pursuant to Section 4 of such Act.

- **Parking Facilities Revenue Bonds** may be issued for the purpose of acquiring, building, improving, equipping, managing, maintaining or controlling motor vehicle parking lots, garages, parking meters, the related real estate and any other revenue-producing facilities related to the regulation, control and parking of motor vehicles in the county pursuant to Sections 5-11001 and 5-11002 of the Counties Code.
- **Waterworks System and Sewerage System Revenue Bonds** may be issued in order to construct, acquire by condemnation or purchase any waterworks properties, sewage facilities or waste management facilities. Such bonds are payable from the income and revenue derived from the operation of the waterworks properties or sewage facilities, or combination thereof, or waste management facilities pursuant to Section 5-15017 of the Counties Code.
- **Industrial Revenue Bonds** may be issued for the purpose of building, rebuilding, acquiring, improving or extending industrial projects within the county, pursuant to the Industrial Building Revenue Bond Act of the State of Illinois, as amended (the “*Revenue Bond Act*”). Industrial projects include a wide range of capital projects—for land, buildings, machinery and equipment—related to any manufacturing, industrial, research, transportation or commercial enterprise. Examples of industrial projects include factories, warehouses, industrial plants, office buildings, repair and service facilities, freight terminals, research facilities, railroad facilities and commercial facilities. In addition, counties can issue Industrial Revenue Bonds to build or convert structures to be leased as (i) correctional facilities by the Illinois Department of Corrections or (ii) state facilities by the Department of Central Management Services (provided the facilities are built according to applicable standards). Pursuant to Sections 2 and 4 of the Revenue Bond Act, counties can also use industrial revenue bonds for site preparation, landscaping and all appurtenances and facilities incidental to such projects, including utilities, access roads, railroad sidings, truck docking, parking facilities, dockage, track, depot, terminals and switching, signaling or industry related equipment. While a county is authorized to acquire, build, rebuild and improve an industrial project, a county is not required to acquire or hold title to the project and can (a) sell, lease or rent such projects to private enterprises engaged in the industries related to the project or (b) loan the proceeds of the bonds to such enterprises.

Alternate Bonds

Alternate Bonds or “double-barrelled bonds” may be issued pursuant to Section 15 of the Debt Reform Act. Alternate bonds are general obligation bonds payable from enterprise revenues or from a revenue source, or both, with the general obligation of the county acting as backup security for the bonds. Once issued, and until paid or defeased, alternate bonds are a general obligation of the county, for the payment of which the county pledges its full faith and credit. Such bonds are payable from the levy of ad valorem property taxes upon all taxable property in the county without limitation as to rate or amount. The intent of the Debt Reform Act is for the enterprise revenues or the revenue source to be sufficient to pay the debt service on the alternate bonds so that taxes need not be extended for such payment. Alternate bonds do not constitute debt for the purpose of any statutory provision or limitation unless taxes (other than a designated revenue source) are extended to pay them. In the event such taxes are extended, the outstanding alternate bonds will count against the county’s debt limit until the county’s audit shows that the alternate bonds have been paid from the pledged enterprise revenues or revenue source for a complete fiscal year.

Several conditions must be met before alternate bonds may be issued. First, alternate bonds must be issued for a lawful corporate purpose. If issued in lieu of revenue bonds, then the revenue bonds must have

been authorized under applicable law (including satisfying any backdoor referendum requirements) and the alternate bonds must be issued for the purpose for which the revenue bonds were authorized. If issued payable from a revenue source limited in its purposes or applications, then the alternate bonds must be issued only for such limited purposes or applications.

Second, alternate bonds are subject to a backdoor referendum. Except as provided in the following paragraph, the issuance of alternate bonds must be submitted to referendum if, within 30 days after publication of the authorizing ordinance and notice of intent to issue the alternate bonds, a petition is filed with the county clerk. The petition must be signed by the greater of (i) 7.5% of the registered voters in the county or (ii) the lesser of 200 of the registered voters or 15% of the registered voters. Backdoor referendum proceedings for revenue bonds and for alternate bonds to be issued in lieu of revenue bonds may be conducted concurrently.

Different rules for a backdoor referendum apply to counties with fewer than 500,000 inhabitants which propose to issue alternate bonds payable solely from enterprise revenues, except for alternate bonds that finance or refinance projects concerning public utilities, public streets and roads or public safety facilities, and related infrastructure and equipment. In this instance, the issuance of alternate bonds must be submitted to referendum if, within 45 days after publication of the authorizing ordinance and notice of intent to issue the alternate bonds, a petition is filed with the county clerk. For a county with more than 4,000 registered voters, the petition must be signed by the lesser of (i) 5% of the registered voters or (ii) 5,000 registered voters. For a county with 4,000 or fewer registered voters, the petition must be signed by the lesser of (i) 15% of the registered voters or (ii) 200 registered voters.

Third, the county must demonstrate that the enterprise revenues are, or that the revenue source is, sufficient to meet the requirements of the Debt Reform Act. If enterprise revenues are pledged as security for the alternate bonds, the county must demonstrate that such revenues are sufficient in each year to pay all of the following:

- (a) costs of operation and maintenance of the utility or enterprise, excluding depreciation;
- (b) debt service on all outstanding revenue bonds payable from such enterprise revenues;
- (c) all amounts required to meet any fund or account requirements with respect to such outstanding revenue bonds;
- (d) other contractual or tort liability obligations, if any, payable from such enterprise revenues; and
- (e) in each year, an amount not less than 1.25 times debt service on all:
 - (i) outstanding alternate bonds payable from such enterprise revenues; and
 - (ii) the alternate bonds proposed to be issued.

If one or more revenue sources are pledged as security for the alternate bonds, the county must demonstrate that such revenue sources are sufficient in each year to provide not less than 1.25 times (1.10 times if the revenue source is a governmental revenue source) debt service on all outstanding alternate bonds payable from such revenue source and on the alternate bonds proposed to be issued. A county need not meet the test described in this paragraph for the amount of debt service set aside at closing from bond proceeds or other moneys.

Installment Contracts, Leases and Debt Certificates

Installment Contracts are contracts providing for payment in installments and are authorized for the purchase or improvement of any real estate, equipment, machinery or other personal property for public purposes pursuant to Section 17 of the Debt Reform Act. The maximum term of an installment contract is 20 years. A county's payment obligation under an installment contract constitutes a binding and enforceable promise to pay the amount borrowed plus interest. The county is expected to agree to annually appropriate amounts to pay the principal of and interest on the installment contract. There is no separate tax levy available for the purpose of making such payments. A county takes title to the project being financed under an installment contract as construction progresses.

Leases of real estate or personal property for public purposes may be entered into, for a term not exceeding 20 years for real property and not exceeding 10 years for personal property, pursuant to Section 17 of the Debt Reform Act and Section 5-1083 of the Counties Code.

Sale-leaseback or lease-leaseback agreements may be entered into by a county to the extent permitted by Section 17(b) of the Debt Reform Act or other applicable law.

Debt Certificates may be issued by a county to evidence the payment obligation of a county under an installment contract or lease pursuant to Section 17 of the Debt Reform Act. The county board may provide for the treasurer, comptroller, finance officer or other officer of the county board charged with financial administration to act as counterparty to the installment contract or lease, as nominee-seller or lessor. The installment contract or lease is then executed by an authorized officer of the county and is filed with and executed by the nominee-seller or lessor. As the county board executes contracts for the acquisition and construction of the project to be financed (the "*Work Contracts*"), the county board orders the Work Contracts to be filed with the nominee-seller or lessor. The nominee-seller or lessor identifies the Work Contracts to the particular installment contract or lease. Such identification permits the payment of the Work Contracts from the proceeds of the debt certificates. Debt certificates are paid from lawfully available funds of the county. A county is expected to agree to annually appropriate amounts to pay the principal of and interest on the debt certificates. There is no separate tax levy available for the purpose of making such payments.

Special Service Area and Assessment Bonds

Special Service Area Bonds. When special services are provided to a particular contiguous area within a county, in addition to the services generally provided throughout the county, a county may create a special service area. The cost of the special services may be paid from taxes levied upon the taxable real property within the area and taxes may be levied in the special service area at a rate or amount sufficient to produce revenues required to provide the special services. A county may create a special service area within a municipality or municipalities when the municipality or municipalities consent to the creation of the special service area.

Bonds secured by the full faith and credit of the special service area territory may be issued for the purpose of providing special services pursuant to Section 27-45 of the Property Tax Code of the State of Illinois, as amended. Such bonds are paid from the levy of taxes unlimited as to rate or amount against the taxable real property in the special service area. The county clerk will annually extend taxes against all of the taxable real property in such area in amounts sufficient to pay the principal and interest on the bonds. Such

bonds are exempt from both the BINA and the Extension Limitation Law. Special service area bonds do not count against the county's statutory debt limit.

Prior to the first levy of taxes in the special service area and at least 60 days after the adoption of the ordinance proposing the establishment of the special service area, the county is required to hold a public hearing and to publish and mail notice of such hearing. At the public hearing, any interested person may file written objections and/or give oral statements with respect to the establishment of the special service area and the levy of taxes therein. As a result of the hearing, the county may delete areas from the special service area as long as the remaining area is contiguous.

Prior to the issuance of special service area bonds, the county must give published and mailed notice and hold a hearing at which any interested person may file written objections and/or give oral statements with respect to the issuance of the bonds. The questions of the creation of the area, the levy of a tax on such area and the issuance of Special Service Area Bonds may all be considered at the same hearing.

The creation of the special service area, the levy of a tax within the area and the issuance of Special Service Area Bonds are subject to a petition process. If, within 60 days after the adjournment of the public hearing, a petition signed by not less than (i) 51% of the electors residing within the special service area and (ii) 51% of the owners of record of land within the special service area is filed with the county clerk objecting to the creation of the special service area, the levy of a tax or the issuance of bonds, the area may not be created, the tax may not be levied and the bonds may not be issued. If such petitions are filed, the subject matter of the petition may not be proposed relative to any of the signatories within the next two years. If no such petition is filed with the county clerk, the county may proceed to adopt an ordinance establishing the special service area, which must be timely filed with the county recorder and the county clerk.

Special Assessment Bonds. Similar to special service area financings, a special assessment is a method of financing a county improvement constituting a "local improvement" that benefits a particular area. The cost of such improvement is assessed against individual properties in amounts approximately equal to the value of the benefit to the properties assessed. Each assessment is a lien on the property and is payable in installments, usually annually with interest. Except for the public benefit portion of the special assessment and any county property assessed for actual benefit, special assessment debt does not count against the county's statutory debt limit.

The Special Assessment Supplemental Bond and Procedures Act of the State of Illinois, as amended, provides supplemental authority regarding the procedures for the making of local improvements and the issuance and sale of obligations payable from special assessments. Special assessment bonds may be issued to make local improvements outside of a municipality. Under Section 5-32004 of the Counties Code, counties may pay for such bonds entirely or partly through special assessments raised for specific local improvements. Pursuant to Section 5-32002 of the Counties Code, the types of local improvements that may be funded by special assessment bonds include:

- (i) constructing, installing, improving or extending storm sewers, sanitary sewers or water mains;
- (ii) improving, widening, repairing or extending any street, highway, road, boulevard, alley, sidewalk or other public way;
- (iii) constructing, installing or repairing curbs, gutters, streetlights and all necessary appurtenances; and

- (iv) any combination of the above within or abutting any platted subdivision.

Public Building Commissions

Pursuant to the Public Building Commission Act of the State of Illinois, as amended, counties are authorized to create public building commissions (“PBCs”) for the purpose of assisting counties in the construction, acquisition, improvement, replacement and operation of public buildings and facilities, if approved by referendum. The PBC is authorized to issue lease revenue bonds and use the bond proceeds to finance the county’s project pursuant to Sections 14 and 15 of such Act. To accomplish the financing, the PBC takes legal title to the county’s buildings and facilities that are being constructed and improved with bond proceeds. The PBC leases such buildings and facilities to the county. The county then levies a tax upon all taxable property in the county to provide for the lease rental payments to the PBC. The PBC issues revenue bonds payable from the lease rental payments made by the county.

This financing method may be of limited use to counties subject to the Extension Limitation Law, as such counties cannot levy a new tax without referendum approval in order to make such lease rental payments to the PBC. For counties that are not subject to the Extension Limitation Law, however, a tax unlimited as to rate or amount may be levied by the county upon all taxable property to provide for the lease rental payments to the PBC.

Promissory Notes

Pursuant to Section 5-1135 of the Counties Code, counties are authorized to borrow money for any corporate purpose from any bank or other financial institution for a period not exceeding two years. The indebtedness is evidenced by a promissory note or similar debt instrument (but not a bond) authorized by an ordinance of the county board and is valid regardless of whether an appropriation with respect to such ordinance is included in any annual or supplemental appropriation adopted by the county. The obligation to make the payments due under the promissory note or other debt instrument shall be a lawful direct general obligation of the county payable from the general funds of the county and such other sources of payment as are lawfully available. Such indebtedness, when aggregated with the existing indebtedness of the county, may not exceed any debt limitation otherwise provided for by law.

Short-Term Borrowing Alternatives to Meet Operating Expenses

The following discussion addresses the ways in which counties can borrow to meet cash flow needs. Federal Regulations require an analysis of the county’s cash flow needs if the interest on the borrowing will be tax-exempt.

Tax Anticipation Warrants are issued in anticipation of taxes levied but not yet collected, pursuant to the Warrants and Jurors Certificate Act of the State of Illinois, as amended. Such taxes are pledged to the payment of the warrants and must be set aside and held for payment of the warrants. Such warrants may be issued in an amount up to 85% of the total amount of the taxes levied for the particular fund against which the warrants are issued. Additionally, counties must ensure that the amount of warrants does not exceed 85% of (a) the county’s last known equalized assessed valuation multiplied by (b) the maximum permitted tax rate for the particular fund involved. Warrants may have a fixed maturity date and are payable in the numerical order of their issuance solely from the taxes levied for the particular fund.

General Obligation Tax Anticipation Warrants are authorized by Section 14 of the Debt Reform Act. Such warrants bear a specified due date and are secured by a levy of ad valorem taxes upon all taxable property in the county without limit as to rate or amount (provided the county is not subject to the Extension Limitation Law). No additional money should accrue to the county as a result of the taxes levied to pay general obligation tax anticipation warrants because when such warrants are issued, the county clerk is instructed to reduce the specific tax rate by the percentage necessary to produce the amount needed to pay the principal of and interest on the warrants. A county may not issue general obligation tax anticipation warrants in excess of the formulas described in the preceding “Tax Anticipation Warrants” section.

Under Section 14 of the Debt Reform Act, a county may issue refunding warrants or general obligation bonds to refund warrants should taxes or other revenues be delayed or insufficient to pay such warrants. The refunding warrants or bonds may also be secured by a levy of ad valorem taxes upon all taxable property in the county without limit as to rate or amount or, for a county subject to the Extension Limitation Law, may be issued as limited bonds.

Warrants initially issued pursuant to applicable law are not regarded as or included in any computation of indebtedness for the purpose of any statutory provision or limitation. Refunding warrants and general obligation bonds issued to refund warrants may be issued without regard to existing debt limitations. Upon being issued, however, such general obligation refunding bonds or warrants must be included and regarded as indebtedness of the county.

Tax Anticipation Notes, like general obligation tax anticipation warrants, have a fixed maturity date and are general obligations issued in anticipation of taxes levied but not yet collected. A county may issue notes under Section 2 of the Tax Anticipation Note Act of the State of Illinois, as amended (the “*Tax Anticipation Note Act*”), in an amount, including principal, interest thereon and costs of issuance thereof, not exceeding 85% of the taxes levied for the particular fund against which the notes are issued. The amount of notes, including principal, interest and costs of issuance, also may not exceed 85% of (a) the county’s last known equalized assessed valuation multiplied by (b) the maximum permitted tax rate for the particular fund involved. No notes may be issued if there are tax anticipation warrants outstanding against the tax to be anticipated by the notes. Tax anticipation notes are secured by the levy and collection of a direct annual tax upon all taxable property in the county sufficient to pay the principal of and interest on the notes to maturity. As with general obligation tax anticipation warrants, no additional money should accrue to the county as a result of the tax because when tax anticipation notes are issued, it is the duty of the county clerk to reduce the specific tax rate by the percentage necessary to produce the amount needed to pay the principal of, interest on and costs of issuance of the notes.

Because general obligation tax anticipation warrants and tax anticipation notes are, and refunding warrants and general obligation bonds to refund warrants may be, secured by an unlimited property tax, they are subject to the requirements of the Extension Limitation Law and BINA and are, therefore, rarely issued.

Personal Property Replacement Tax Notes may be issued in an amount not to exceed 75% of the entitlement of replacement taxes for the year anticipated pursuant to Section 4.1 of the Tax Anticipation Note Act. The amount of any transfers from the working cash fund of the county in anticipation of replacement taxes should be subtracted from the amount authorized by the 75% formula. The entitlement amount must be certified by the Director of the Illinois Department of Revenue. Such notes are payable solely from personal property replacement taxes distributed to the county.

Revenue Anticipation Notes may be issued in anticipation of revenue from a reliable source such as federal aid, state revenue sharing or local taxes and fees under the Revenue Anticipation Act of the State of Illinois, as amended. Such notes must mature within one year of their date of issue and must be authorized by a vote of at least two-thirds of the members of the county board. Revenue anticipation notes may not be issued after the revenue to be anticipated has become delinquent and may not be issued in an amount in excess of 85% of anticipated revenues. The notes are payable solely from the revenues that have been anticipated and do not count against a county's debt limit.

Long-Term Borrowing Alternatives to Meet Operating Expenses

Bonds for the payment of outstanding indebtedness may be issued pursuant to Section 6-8001 of the Counties Code, if approved by referendum, when a county determines there are outstanding claims for county expenses or county purposes that, when added to the sum levied for county purposes, exceed the sum of 25 cents on \$100 valuation of property. The bonds are secured by the levy of a direct annual tax on all property in the county without limitation as to amount, but are subject to the county's tax rate for county purposes. Federal Regulations require an analysis of the anticipated need for such borrowings and the period of time over which the bonds may mature.

Counties with more than 200,000 in population may issue bonds for the payment of outstanding indebtedness without referendum pursuant to Section 6-8001 of the Counties Code, so long as the aggregate principal amount of the bonds to pay such claims does not exceed \$2,500,000 and the bonds mature within 10 years. The bonds are secured by the levy of a direct annual tax on all taxable property in the county without limitation as to rate or amount or, for a county subject to the Extension Limitation Law, the bonds must be issued as limited bonds. Federal Regulations require an analysis of the anticipated need for such borrowings and the period of time over which the bonds may mature.

Insurance Reserve Bonds may be issued pursuant to Section 9-105 of the Local Government and Governmental Employees Tort Immunity Act of the State of Illinois, as amended (the "*Tort Immunity Act*"), without referendum for the purpose of creating a reserve (i) for the payment of any cost, liability or loss against which a county may protect itself or self-insure pursuant to Section 9-103 of the Tort Immunity Act, or (ii) for the payment of which a county may levy a tax pursuant to Section 9-107 of the Tort Immunity Act, including any or all tort judgments or settlements entered against or entered into by the county. Such reserve fund, including interest earnings reasonably anticipated thereon, may not be funded in an amount in excess of that which is reasonably required for the payment of such costs (including costs of issuance of the bonds issued for the purpose of funding such reserve fund) as certified by an independent auditor, actuary or insurance underwriter. Furthermore, such reserve may not be increased beyond 125% of the auditor's, actuary's or insurance underwriter's estimated ultimate losses at the 95% confidence level. Insurance reserve bonds are secured by the levy of a direct annual tax on all taxable property in the county without limitation as to rate or amount or, for a county subject to the Extension Limitation Law, may be issued as limited bonds. The Tax Code imposes significant restrictions on the ability of a county to issue insurance reserve bonds on a tax-exempt basis. Generally, in order to issue insurance reserve bonds on a tax-exempt basis, bond proceeds on deposit in the insurance reserve fund may be invested only in certain other tax-exempt obligations until the bonds are retired.

Refunding Bonds

Refunding Bonds may be issued pursuant to Division 6-10 of the Counties Code to pay the outstanding bonds of a county in order to avoid a default, restructure the county's debt burden or reduce the county's interest costs. Refunding bonds are not subject to direct or backdoor referendum. The issuance of refunding bonds requires compliance with complex Federal Regulations. At the commencement of any refunding, a county should consult bond counsel regarding the federal tax implications involved.

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