

Municipal Cash Flow Financing Vehicles, Their Limitations and Relevant Legislation

Douglas E. Goodfriend, Esq.

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**Douglas E. Goodfriend, Esq., Partner
Bond Counsel**

Orrick, Herrington & Sutcliffe LLP

51 West 52nd Street, New York, New York 10019-6142

Email: dgoodfriend@orrick.com

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**Declining Revenues and Increasing Operating
Expenses:
Current Borrowing Options**

Financing Options

Revenue Anticipation Notes (RANs)

Tax Anticipation Notes (TANs)

Deficiency Notes

Budget Notes

Revenue Anticipation Notes (RANs) and Tax Anticipation Notes (TANs)

Temporary Revenue Shortfalls

RANs or TANs can help with cash flow for anticipated delays in receipt of revenue in the current or succeeding fiscal year.

RANs - Issued in anticipation of the receipt of a specific revenue (most commonly State/Federal aid or sales tax) when expenditures do not align with the receipt of such revenues

- May be issued for one year and renewed if revenue for which the RAN was issued against was not received by the maturity of the RAN; however, RAN cannot be renewed beyond the close of the second fiscal year succeeding the fiscal year of the original issuance date.
- When initially issued for the succeeding fiscal year's revenues, RANs can be issued within fourteen days prior to the commencement of the succeeding fiscal year.

TANs - Issued in anticipation of the receipt of property taxes (not sales or other taxes).

- May be issued for one year and renewed to the extent that property taxes are not received by the maturity of the TAN and must be fully paid off within five years after their original date of issue.
- When issued for the succeeding fiscal year's taxes, TANs can be issued within ten days prior to the commencement of the succeeding fiscal year.

Revenue Anticipation Notes (RANs) and Tax Anticipation Notes (TANs)

RAN and TAN Borrowings

- Estimated Cash Flow statement to be provided to bond counsel and included in Official Statement or offering document showing the month or point in time when the deficit is expected to occur to justify the need for the RAN or TAN issuance .
- Cash Flow statement should also include the repayment of borrowing and also provide the actual cash flow of the prior fiscal year.
- Revenue/Tax Anticipation Note resolution to be adopted by the governing board by simple majority vote. No estoppel period is required. Resolution is effective immediately, not subject to public referendum.
- Consult with Bond Counsel & Municipal Advisor on appropriate timing and sizing of issuance.

Limitations

- (1) If it has been determined that the revenue or taxes in the budget will not, in fact, be received at all during the fiscal year, then a RAN or TAN cannot be issued in anticipation of receipt.
- (2) When issuing ahead of a fiscal year in anticipation of next year revenues, it is for that next year's initial cash flow problem, not to fill current fiscal year shortfall.

Deficiency Notes

Non-Temporary Revenue Shortfalls

- Deficiency notes may be issued to finance a deficiency of funds caused by revenues which were less than the estimated amount budgeted in the current fiscal year (up to five percent of the budget) .
- Deficiency note resolution to be adopted by the governing board by simple majority vote. No estoppel period is required. Resolution is effective immediately, not subject to public referendum.

Limitations

- (1) Must be paid off in next fiscal year unless issued after adoption of next fiscal year budget (if so, two (2) years total to pay off).
- (2) No authority to “bond out” the revenue loss over a longer period of time.

Budget Notes

Unanticipated Operational Expenses

- The COVID-19 Pandemic has caused fiscal stress to local governments and school districts with unexpected increased operating expenses (often not offset by any revenue savings due to suspended programs).
- Local governments may issue budget notes in any fiscal year to provide funding for unexpected expenditures for which insufficient or no provision was made in the budget (up to five percent of the budget) or for necessary expenditures resulting from an unforeseen public emergency.
- May be issued to cover expenses related to unforeseen public emergencies, however, there is no authority to issue budget notes for a revenue shortfall.
- Budget notes may be renewed but must not mature later than the close of the fiscal year succeeding the fiscal year in which the budget notes were originally issued.
- To be redeemed in full at maturity with taxes or assessments levied for the fiscal year in which the budget notes mature or revenues legally available during the fiscal year in which the budget note was issued.
- Budget note resolution to be adopted by the governing board by simple majority vote. No estoppel period is required. Resolution is effective immediately, not subject to public referendum.

Limitations

- (1) Must be paid off in next fiscal year unless issued after adoption of next fiscal year budget (if so, two (2) years total to pay off).
- (2) No authority to “bond out” the expenses over a longer period of time.

Draft New Financing Legislation

SECTION 29.20 DEFICIENCY NOTES



a. Any municipality, school district or district corporation may issue deficiency notes during any fiscal year to finance a deficiency in any fund or funds arising from revenues being less than the amount estimated in the budget for such current fiscal year. Such notes may be issued in such amount as the finance board shall determine to be necessary, but not to exceed five per centum of the amount of the annual budget of such municipality, school district or district corporation.

b. Deficiency notes may be renewed from time to time, but such notes, including the renewals thereof, shall mature not later than the close of the fiscal year succeeding the fiscal year in which such notes are issued. However, such notes, including the renewals thereof, may mature not later than the close of the second fiscal year succeeding the fiscal year in which such notes are issued, when authorized and issued during a fiscal year at a time subsequent to the date of the adoption of the annual budget for the next succeeding fiscal year, by a municipality, school district or district corporation in which the total amount of taxes or assessments levied for a fiscal year is determined pursuant to an annual budget adopted during the fiscal year preceding such fiscal year.

DEFICIENCY NOTES

Provision	Current Law	Proposed Law
Maximum Maturity of Notes	Must pay off in next fiscal year unless issued after adoption of next FY budget (then 2 years total)	Authorizes renewal for period up to 5 years from original issuance date if issued for budget deficiency resulting from unforeseen public emergency including epidemics (with annual principal installments)
Borrowing Size Limitation	5% of annual budget	CFO certified amount
Conversion To Bonds; Original Bond Issuance	Not authorized	Authorizes issuance of bonds for this purpose either initially or to redeem notes, subject to OSC review of budget deficit
Period of Probable Usefulness For Bond Issuance (Maximum Maturity of Bonds)	Not authorized	Deficit of 2% or less of annual budget: 10 years Deficit exceeds 2% of annual budget: 15 years
Private Sale Marketing of Bonds	Not authorized	Authorizes subject to OSC approval of terms and conditions
Applicability to Type of Local Government Unit	Municipality, School District, District Corp.	Municipality, School District, District Corp., BOCES
Method(s) of Authorization	Note resolution of board	1. Note resolution of board 2. Bond resolution of board (not subject to mandatory or permissive referendum or prior public vote)

SECTION 29.00 BUDGET NOTES



a. 1. Any municipality or district corporation, other than a fire district, may issue budget notes during any fiscal year for any unforeseeable public emergency during such year such as epidemic, conflagration, riot, storm, flood, earthquake or other unusual peril to the lives and property of the citizens of such unit of government in such amount as the finance board shall determine to be necessary, but no municipality may issue such notes for emergencies in behalf of any local improvement district. Any school district may issue budget notes during any fiscal year to provide temporary school buildings or facilities in such year when such buildings or facilities are necessitated because of an unforeseeable public emergency during such year such as epidemic, conflagration, riot, storm, flood, earthquake or other unusual circumstance preventing the use in whole or in part, of the buildings or other facilities used by such school district.

2. Any municipality or district corporation which adopts an annual budget may issue budget notes during any fiscal year for expenditures for which an insufficient or no provision is made in the annual budget for such fiscal year in an amount not to exceed five per centum of the amount of such annual budget.

Notwithstanding the foregoing limitation, any fire district may issue budget notes pursuant to this subdivision in the amount of at least one thousand dollars. In addition, any county which adopts an annual budget may issue budget notes pursuant to this subdivision without limitation as to amount for necessary expenditures for the apprehension and prosecution of persons charged with the commission of crime and for which an insufficient or no provision has been made in the annual budget for such fiscal year.

SECTION 29.00 BUDGET NOTES (CONTINUED)



If, however, any such municipality or district corporation may issue budget notes for any such expenditures pursuant to the provisions of any other paragraph of this section, such municipality or district corporation shall not issue budget notes for any such expenditures pursuant to this subdivision. Any town, and any county, in computing “the amount of the annual budget” for the purposes of this subdivision shall not include any amounts which are to be paid in the first instance from improvement district assessments.

3. A school district may issue budget notes during the last nine months of any fiscal year for expenditures for which an insufficient or no provision is made in the annual budget for such fiscal year in an amount not to exceed five per centum of such annual budget. The foregoing limitation shall not be applicable in any case in which a budget note resolution has been adopted by the finance board of a school district and has been approved by a majority of the qualified voters of the school district present and voting at any annual or special meeting of the school district held pursuant to the provisions of the education law during the last nine months of such fiscal year. The notice for any such meeting, in addition to complying with applicable provisions of the education law, must state that such budget note resolution will be submitted for approval by the voters at such meeting; the purpose for which moneys are proposed to be borrowed under such resolution; the total amount proposed to be borrowed, and the fiscal year in which taxes are required to be levied for the payment of the budget note proposed to be issued. The vote at any such meeting on such proposition shall be by ballot, or ascertained by taking and recording the ayes and noes of such qualified voters attending and voting at such meeting.

SECTION 29.00 BUDGET NOTES (CONTINUED)



3-a. Notwithstanding any other provisions of this section, where a school district can demonstrate to the satisfaction of the commissioner of education extenuating circumstances that a waiver is warranted for the adoption of a budget note resolution by its finance board, upon certification by the chief executive officer to the commissioner of education, in such form as the commissioner of education shall determine pursuant to guidelines developed, for the purpose of making additional accruals requirements in the two thousand four--two thousand five or two thousand five--two thousand six school years associated with changes in accounting methodologies for liabilities for employer and employee contributions due and payable to a public retirement system that will result in a tax increase to the residents of the district in the following school year, a school district may issue budget notes during the last nine months of the school year in which such resolution is adopted, or during the first three months of the following school year, in an amount not to exceed the amount of such additional accruals for public pension liabilities. The limitation on the amount of budget notes contained in subdivision three of this paragraph shall not be applicable to notes issued pursuant to this section and the amount of budget notes issued pursuant to this section shall not be included in the computation of such limitation.

j. Except as otherwise provided in paragraph d of this section, budget notes may be renewed from time to time but such notes, including the renewals thereof, shall mature not later than the close of the fiscal year succeeding the fiscal year in which such notes are issued. However, such notes, including the renewals thereof, may mature not later than the close of the second fiscal year succeeding the fiscal year in which such notes are issued, when authorized and issued during a fiscal year at a time subsequent to the date of the adoption of the annual budget for the next succeeding fiscal year, by a municipality, school district or district corporation in which the total amount of taxes or assessments levied for a fiscal year is determined pursuant to an annual budget adopted during the fiscal year preceding such fiscal year.

BUDGET NOTES

Provision	Current Law	Proposed Law
Maximum Maturity of Notes	Must pay off in next fiscal year unless issued after adoption of next FY budget (then 2 years total)	Authorizes renewal for period up to 5 years from original issuance date if issued for budget deficiency resulting from unforeseen public emergency including epidemics (with annual principal installments)
Borrowing Size Limitation	Not limited to 5% of annual budget if due to unforeseen public emergency	Unchanged
Conversion To Bonds; Original Bond Issuance	Not authorized	Authorizes issuance of bonds for this purpose either initially or to redeem notes
Period of Probable Usefulness For Bond Issuance (Maximum Maturity of Bonds)	Not authorized	5 years unless: <ul style="list-style-type: none"> • Amount exceeds 1% but does not exceed 2% of annual budget: 10 years • Exceeds 2%: 15 years
Private Sale Marketing of Bonds	Not authorized	Authorizes subject to OSC approval of terms and conditions
Applicability to Type of Local Government Unit	Municipality School District (restricted uses) Fire District (restricted uses)	Municipality School District Fire District BOCES
Method(s) of Authorization	Note resolution of board	1. Note resolution of board 2. Bond resolution of board (not subject to mandatory or permissive referendum or prior public vote)

BAN EXTENSION AND RESERVE FUND USE LEGISLATION



- In Local Finance Law, the general rule is a local government can issue BANs and renew them annually four (4) times (with principal paydowns).
- Unless the BAN is for an “assessable improvement”, like town improvement district projects, the remaining outstanding principal must be “bonded out” by the fifth anniversary of the first borrowing.
- Issuers with BANs issued in 2015, if not paid off this year, would be compelled to issue bonds in the current choppy municipal bond market. This condition may also continue next year.
- Legislation signed into law as Chapter 157, as amended by Chapter 126 of the Laws of 2020 now (1) permits BANs issued in 2015 through 2021 to remain in notes up to seven (7) years from original date of issuance, (2) permits temporary use of reserve fund monies for COVID-19 pandemic expenses to be reimbursed over maximum five subsequent fiscal years, and (3) interfund loans for that purpose to be repaid by close of next fiscal year.

PENDING LEGISLATION



- In Legislative Bill Drafting Commission:
 1. Deficiency notes expansion (16455-04-0)
 2. Budget notes expansion (16459-03-0)