

TACCBO 2018 Annual Conference
June 12-15, 2018

7a – Public Finance for Community Colleges

Presented By:

David Méndez

Partner, Bickerstaff Heath Delgado Acosta LLP

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Presentation Overview

- Examine the types of bond financing available to Texas Junior College Districts
- For General Obligation Bonds, provide an in-depth look at the bond election process
- Explain the use of Public Finance Corporations for conduit financing by College Districts
- Provide an overview of the Attorney General review process
- Examine the tax and securities aspects of the bond issuance process

Types of Funding



Types of Obligations

- General Obligation Tax Bonds
- Maintenance Tax and Long Term Notes
- Revenue Bonds
- Bonds issued through Public Finance Corporations (PFCs)

GO Bonds

- General obligation debt of the community college, voter approved at a District-wide election (more on this later)
- Secured by ad valorem taxes, carry the highest credit rating of the District
- Limited Tax Bonds annual bond tax may never exceed \$0.50/\$100
- Authorized by Tex. Educ. Code Section 130.122

Maintenance Tax Notes

- Maintenance Tax Notes
 - Supported by local ad valorem taxes
 - Issued for maintenance and renovation of existing capital improvements
 - Authorized by Tex. Educ. Code Section 45.108

Maintenance Tax Notes

- Based on Public School Law
 - May not exceed 75% of previous year's income.
 - “Maintenance” has a very specific definition in code and through AG interpretation
 - 20 year maximum maturity
 - Authorized by Tex. Educ. Code Section 45.108

Long Term Notes

- College District in one or more counties having a total population of at least 100,000
- Available solely for the purpose of asbestos cleanup and removal
 - Secured by revenues which may include ad valorem maintenance tax
 - 15 year maximum maturity
 - Authorized by Tex. Educ. Code Section 130.126

Combined Fee Revenue Bonds

- Debt secured by certain fees of the District
- May be used for both in-district and out-of-district purposes
- Capacity is finite; statutorily limited by available pledged revenue
- Without corresponding increase in unrestricted revenues (i.e., taxes, tuition, fees) added debt may limit operational revenue

PFC Bonds

- Public Facilities Corporation Finance
 - Supported by lease payments by the District
 - Based on Chapter 303 Texas Local Government Code

Public Facilities Corporation (PFC)

- Trustees may constitute the Board of Directors of the PFC
- Lease revenue bonds issued by PFC available for property acquisition and development in the service area
- District leases the new facility from the PFC
- The bonds are secured by annual lease payment of District

Public Facilities Corporation (PFC)

- District Board has final authority over use and issuance of new money debt
- District Board has final authority over refinancing outstanding debt
- Does not impair revenue bond capacity
- Structured properly, may provide for multi-staged development
- Lease purchase transaction, may help District avoid costly developer fees

- PFCs may undertake a broad range of activities on behalf of a school district:
 - Issue bonds to finance the costs of public facilities with the proceeds used to:
 - Directly finance a public facility and/or
 - Make a loan to another entity to accomplish the district's purposes with respect to a public facility
 - “Acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in service public facilities.”
 - (Texas Local Government Code, Section 303.021).

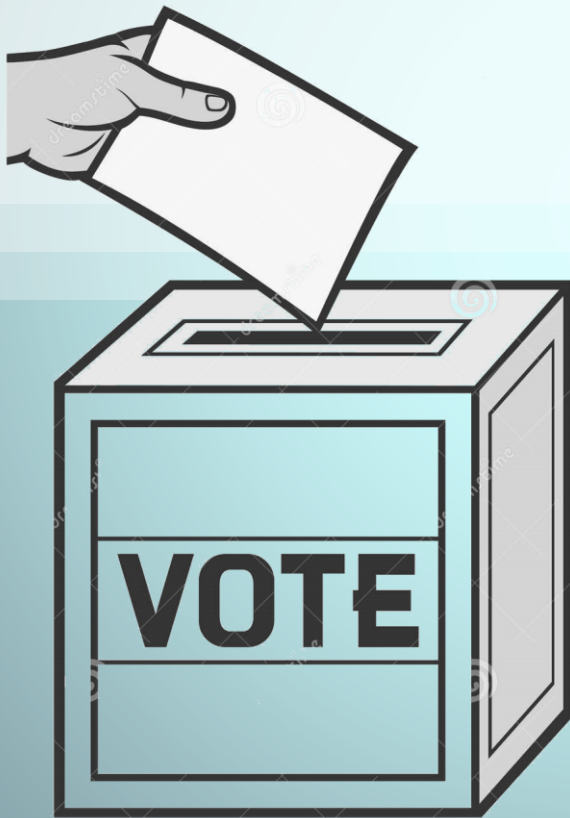
Refunding and Advanced Refunding

- “**Refunding**” is the issuance of bonds, the proceeds of which are used to pay the principal and interest of, i.e., “redeem”, bonds that were issued earlier.
- Districts undertake refundings to achieve savings on the debt service of the earlier-issued bonds.
- “**Advance Refunding**” is the issuance of bonds for refunding purposes more than 90 days before the earlier-issued bonds are redeemed.
- Advanced refundings were frequently used to lock-in interest rate savings before the call date on the earlier issued bonds.

Refunding and Advanced Refunding

- The recent tax reform eliminated the advance refunding of tax exempt issues with other tax exempt Issues
- With respect to any obligation, only one "tax-advantaged" i.e., tax-exempt, or subsidized, bond, may be outstanding at a time
- The allowable options for a refunding are to advance refund with taxable bonds, or time the transaction for a current refunding
- There are questions as to whether the subsidies may be "turned-off" on Build America Bonds so that they may be advance refunded with tax-exempt bonds
- Proposed legislation to authorize advance refunding has been proposed but does not appear likely to pass in the near term

Bond Elections



Pre-Election

What level of justification for the capital improvements will be required?

- What level of architectural and engineering (costing) analysis will be performed prior to the bond election?
- How is the scope and size of the bond measure(s) to be determined?
 - Board and Staff
 - Citizen's Committee (providing for community or constituency group buy-in)

Pre-Election

- Sizing issues for a project
 - Accuracy of estimated project costs
 - Is size driven by impact on ad valorem tax rate?
- Crafting the measure
 - The politics of the project
 - What will voters approve?
- Planning for failure
 - Limiting planning cost exposure in the event the measure fails
- Reimbursement intentions

Pre-Election

- The Bond Proposition
- Will there be one proposition or multiple?
- Will the proposition(s) be written broadly or narrowly?
- What amounts will be assigned to each proposition?
- Timing of the Election
 - Will there be other bond elections for other entities on the same ballot?
 - Are there District Trustee elections on the ballot?

Call and Conduct of Election

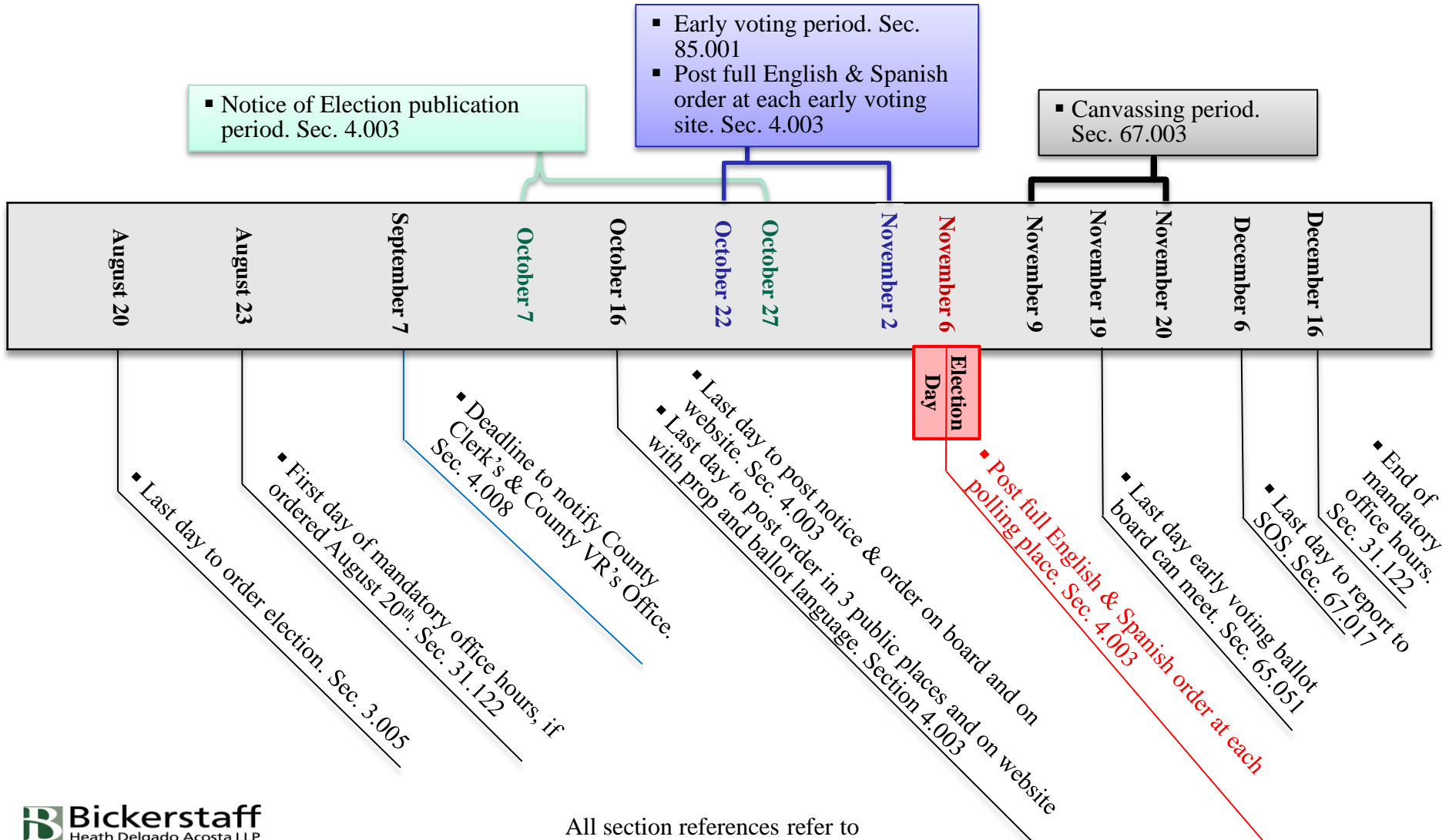
- Uniform Election Dates
- Election Administrators and Election Services Agreements
- Joint Elections and Joint Election Agreements
- Publication and Posting of Notice and Providing information about the Election

Election Dates

- Uniform Election Dates are May and November
- Are other Entities holding their bond elections on the same date as the District's bond election?
- What voters will be drawn to participate in the bond election and how will they react to the bond measure?
- Is there sufficient time to call and prepare for the election?

Timeline for College District Bond Election

November 6, 2018



All section references refer to the Texas Election Code, unless otherwise specified.

Election Agreements

- Most College Districts no longer conduct their own elections and generally contract with the County Elections Administrator or other County officials for this service.
- Election Administrators are authorized to conduct elections for other local governmental entities under the Election Code but generally do not have experience with bond election requirements for notice and publication.

Election Agreements

- Joint Elections are typically required when two or more entities are holding elections on the same day in overlapping territory.
- These joint elections are coordinated through Joint Election Agreements.
- Typically, the College District will need to assume responsibility for posting and publication of its bond election notices to ensure compliance with requirements.

Educating the Voters

- The District may utilize public resources to provide neutral information about the election.
- The District is prohibited from utilizing public resources to advocate **for or against passage** of the measure.
- What is allowed within these parameters?

Educating the Voters

- Districts typically provide information about projects to be undertaken with the bond proceeds. This information must be neutral in nature.
- For example it is appropriate for the District to have descriptions on its website or in other materials of the nature of buildings to be constructed or renovated or architectural renderings of such projects as well as objective information concerning capacity, cost, capabilities, functionality, etc.
- The District should avoid subjective information in such descriptions that would be challenged as advocating for the passage of the measure.

Educating the Voters

- Districts also typically provide information about the impact on ad valorem tax rates should the bonds be authorized and sold.
- For example it is appropriate for the District to have descriptions on its website or in other materials of the anticipated annual debt service and the impact on a typical homeowner's ad valorem tax bill.
- Districts also regularly list details about the election, such as the location of early voting and election day polling places and the times and dates of early voting.

Educating the Voters

- Districts also undertake to make officials and staff of the college district aware of what officers and employees of the District can and cannot do during an election.
- Because the board of trustees of a college district are not paid, the trustees have wide latitude, when acting on their own time and with their own resources as far as advocating for the bond measure.
- On the other hand, the president of the college district is typically precluded from utilizing the staff and resources of the college district to advocate for the passage of the bonds.

Educating the Voters

- So, trustees and staff may work in tandem. For example it is appropriate for the Trustees of a district to attend a civic event and advocate for passage of the bond measure and they may call on the president of the college to provide information but the information that the president can provide must be neutral.
- Likewise, while the trustees can advocate for the passage of the measure they cannot have the president and staff create or distribute campaign material for the bond election using public funds or the districts website or email or mail systems.

Successful Bond Election

- Assuming a successful election, the next steps, after the canvass and contest period have expired, are:
- Offering (Competitive, Negotiated, Private Placement)
- Sale
- Authorization (Direct or Delegated)
- AG review (Comptroller Registration)
- Delivery (closing) of the bonds

Pre-Issuance Considerations

- Sizing an Issue
- Factoring in issuance costs and achieving efficiency
- Timing issuance to meet construction objectives
 - Keeping the plate full
 - Avoiding bidding against yourself
 - Timely construction and the consequences of delay

Bond Issuance Timetable

Date	Event	Working Group	Board
(Month, Day)	Working Group Meeting	X	
(Month, Day)	Board Briefing; Board approves selection of Underwriters		
(Month, Day)	Distribute draft POS and documents	X	X
(Month, Day)	Comments due 1 st drafts	X	
(Month, Day)	Distribute 2nd drafts		
(Month, Day)	Comments due 2nd drafts	X	
(Month, Day)	Distribute 3rd drafts	X	
(Month, Day)	Comments due 3rd drafts	X	
(Month, Day)	Distribute 4 th drafts		
(Month, Day)	Briefing to Board; Board Approves Offering Documents for Distribution; Parameter Resolution	X	X
(Month, Day)	Deadline for non-publicly-traded entities to file Interested Party 1295 Forms online at Texas Ethics Commission website with copies to the District	X	X
(Month, Day)	Send documents to Rating Agencies	X	
(Month, Day)	Rating Conference calls	X	
(Month, Day)	Send diligence questionnaires to syndicate with POS		
(Month, Day)	Due Diligence Call		
(Month, Day)	Electronically Post Preliminary Official Statement	X	
(Month, Day)	Ratings due	X	
(Month, Day)	Pricing Pre-file with Attorney General	X	X
(Month, Day)	Comments Due on Final Offering Documents	X	
(Month, Day)	Send Final Official Statement to Printer; Post and Mail	X	
(Month, Day)	Receive Preliminary Approval Letter from the Texas Attorney General; Pre-closing	X	
(Month, Day)	Closing	X	

Offering Documents

- District's offering of Bonds through underwriters (who may sell them to retail investors) constitutes an offering of municipal bonds subject to Securities and Exchange Commission regulation.
- An underwriter cannot buy your bonds unless it insures that the district has complied with rule 15c2-12
- An offering document is prepared

Offering Documents

- District undertakes to make certain annual disclosures while the bonds are outstanding
- If the bonds are eligible for tax exempt treatment, the district covenants not take actions to make the bonds taxable
- If sale is a private placement to a bank, for example, these representations may be more limited.

Bond Sale and Authorization

- After offering period, the district may accept bids, negotiate a price with a selected underwriter, or private place a bond with a selected bank or other purchaser.
- The sale may be made through a term sheet or a published notice of sale specifying certain terms, or it may be through a negotiated bond purchase agreement.

Bond Sale and Authorization

- The board of trustees of the district may authorize the sale and issuance of the bonds through an order as a direct action (that is the bid or proposal) of the purchaser is presented directly to the board of trustees which directly acts on accepting the bid or proposal or, in certain circumstance, the board of trustees may delegate the authority to accept a bid or proposal to one or more officers of the district.
- AG review (Comptroller Registration)
- Delivery (closing) of the bonds

Attorney General Review

- Once the bonds are priced, Bond Counsel must present the transcript of the transaction to the Attorney General for review and approval.
- There are specific regulations for this process and some of the items may have been precleared with the agency prior to the actual issuance of the bonds. For example, the form of the bond proposition placed on the ballot, or the form of the notice of intention to enter into a Section 271.005 lease, or other similar items.

Attorney General Review

- The Attorney General has 10 business days to review and issue an opinion approving the bonds
- The effect of the AG's opinion is to make the bonds incontestable as a matter of law
- Once the AG opinion is released, the Bond (and any related lease) are registered by the Comptroller of Public Accounts
- The Bonds are then delivered to the purchasers at the scheduled closing

Taxes



Taxable/Tax Exempt Status

- Who will benefit from use of facilities or pay revenues that support the debt payment?
- Subsequent change of use and implications
- Management contracts

Federal Tax Issues & Timely Construction

- Proceeds of tax exempt bonds must be expended within specified time period.
- Arbitrage and the limitations on the investment of bond proceeds pending use on construction projects.
- Private activity tests and the use of bond proceeds.

IRS AUDITS

- Enforcement officials have targeted what they view as an abusive use of the municipal bond exemptions
- The focus has historically been on arbitrage driven transactions where the bond proceeds are invested in higher-yielding instruments
- The agency has generally sought to settle such tax disputes with agreements in which the feds recoup any profits from the unauthorized investment, but they have threatened to go after bondholders if they cannot resolve the case otherwise

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