

CBAI LEGAL: Rules Vary for Local Government Entity Borrowing

Note: The information below is limited to the general borrowing authority of municipalities and counties. It is not instructive as to the internal budgeting or appropriation processes that such governmental units can or must follow.

I have fielded questions from CBAI member banks regarding whether a local unit of government could borrow from a bank, or whether its financing and debt authority was limited exclusively to bond issuances. Effective July 16, 2014, Illinois county boards became authorized to borrow money from financial institutions by executing conventional promissory notes. Municipal governments already possessed promissory note debt authority for many years prior to the county borrowing authority; however, the Illinois laws addressing such borrowing from banks differ between counties, municipalities and other units of local government as described below.

Borrowing by municipalities

Section 8-1-3.1 of the Illinois Municipal Code authorizes a municipality to borrow from a bank, provided that: (1) the "promissory note…shall be authorized by an ordinance passed by the corporate authorities;" (2) the promissory note is executed by the mayor or president (depending on the form of the municipality's charter); (3) the note shall be repaid within ten years; and (4) the total indebtedness of the municipality (including the promissory note and any other existing indebtedness) shall not exceed the municipality's statutory debt limit. Tat statutory debt limit, in a municipality with a population under 500,000, equals 8.625% of the value of the taxable property in the municipality as ascertained by the most recent assessment prior to the execution of the promissory note.

The promissory note debt is deemed to be a direct general obligation of the municipality "payable from the general funds of the municipality and such other sources of payment as are otherwise lawfully available." The lending bank has no legal obligation to determine whether an appropriation pertaining to the borrowing was included in any annual or supplemental appropriation adopted by the municipality's corporate authorities.

Borrowing by counties

Procedurally, there are similarities between county borrowing by promissory note and municipal borrowing: the loan must be approved by an ordinance and be executed by a County Board Chairman or

County Executive. Also, the borrowing represents a direct general obligation of the county, and when aggregated with all other outstanding indebtedness of the county cannot exceed the statutory debt limitation for the county, which is dependent on the county's annual budget (i.e., indebtedness cannot be incurred if it would cause county debt to exceed the annual budgeted liabilities). The most noteworthy difference between promissory note borrowing under the Counties Code versus under the Illinois Municipal Code is that the loan to a county must be repaid within two years, unlike the ten year repayment period for municipalities.

Other governmental entities or districts

There are numerous other political bodies and subdivisions thereof that may have borrowing authority authorized by, and limited by, statute. One of the most recent examples is last year's (effective August 15, 2014) authorization for promissory note borrowing by Park Districts pursuant to Illinois Public Act 98-906. The procedures for Park District borrowing match those of counties, including the obligation to repay within two years; the aggregate debt limitation applicable to Park Districts is 2.875% of the taxable property within the District, but can be increased to 5.75% if voters within the District approve such amount by referendum.

Other units of local government include school districts, sanitation districts, civic center districts, museum districts, and countless others that are too numerous to be addressed here. However, it might be helpful when considering a loan to a unit of local government to require documentation regarding the applicable authority, requirements and limitations.