



Financing Infrastructure with Bonds and Bank Loans

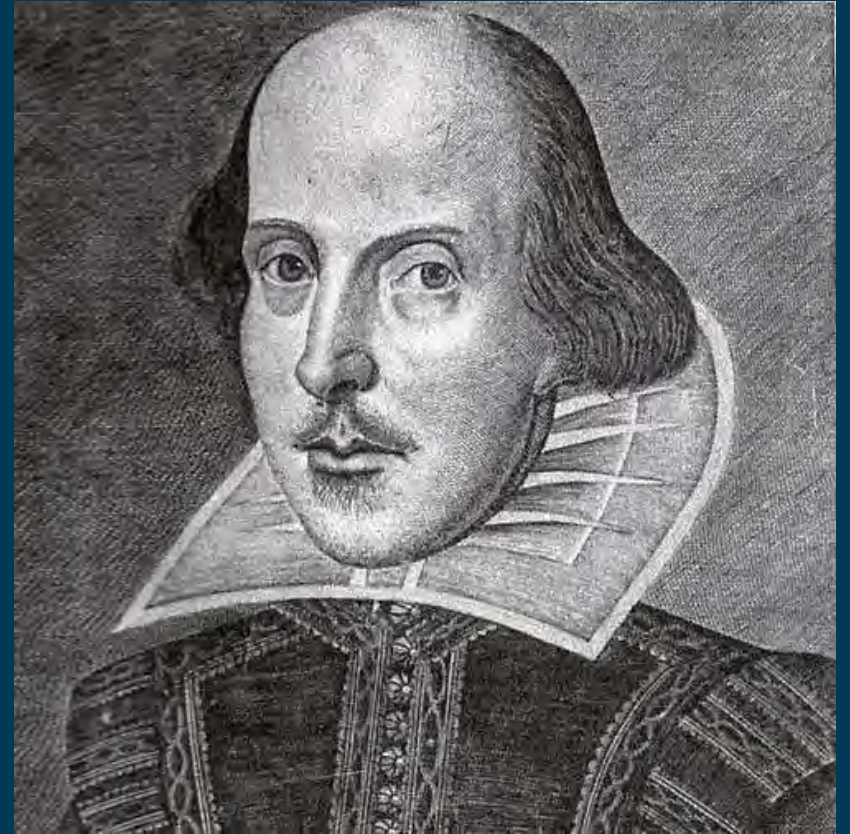
Infrastructure Assistance Coordinating Council Conference

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Why Borrow?

“Neither a borrower nor a lender be.”

– Hamlet Act I, Scene 3



Why Borrow?

- Current projects produce future benefits
- Investments produce gains
- Accumulating funds is politically difficult



Planning to Borrow

- Amount
- Source of repayment
- Tax status
- Term and redemption
- Interest rates
- Credit enhancement
- Covenants
- Refundings



Credit

GENERAL OBLIGATION BONDS

- Unlimited Tax General Obligation (*UTGO*) – voter-approved
- Limited Tax General Obligation (*LTGO*) – non-voted (commissioner bonds)



Credit

REVENUE BONDS

- Special taxes
- System, enterprise, or project revenue
- Assessments (LID, ULID, RID)



Security

BOND RESOLUTION

- Pledge of taxes or revenues
- Flow of funds
- Reserve fund
- Covenants (including rate covenant)
- Debt capacity or additional bonds
- Defeasance



Bonds or Bank Loan?

BONDS

- Long-term (30+ years)
- Requires disclosure
- May require rating

BANK LOAN

- Shorter term (10-15 years)
- No disclosure or rating



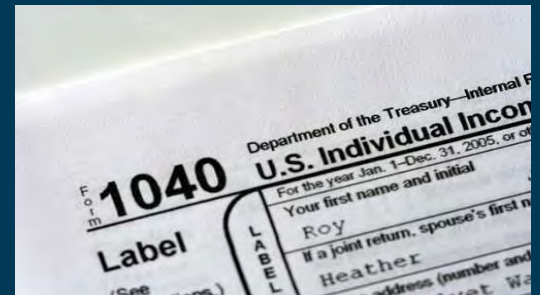
Who is involved?

- Issuer
- Financial Advisor
- Bond Counsel
- Purchaser:
Underwriter or Bank
- Purchaser's Counsel
- Fiscal Agent
- Rating Agency



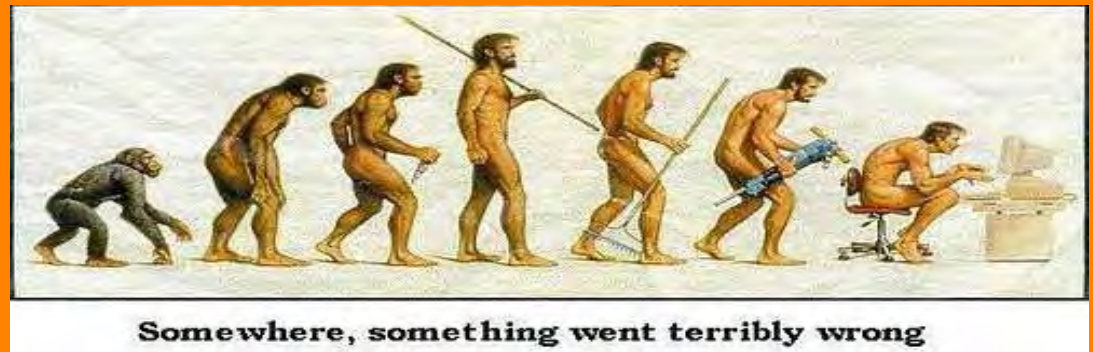
Role of Bond Counsel

- State law
- Securities law
- Tax law



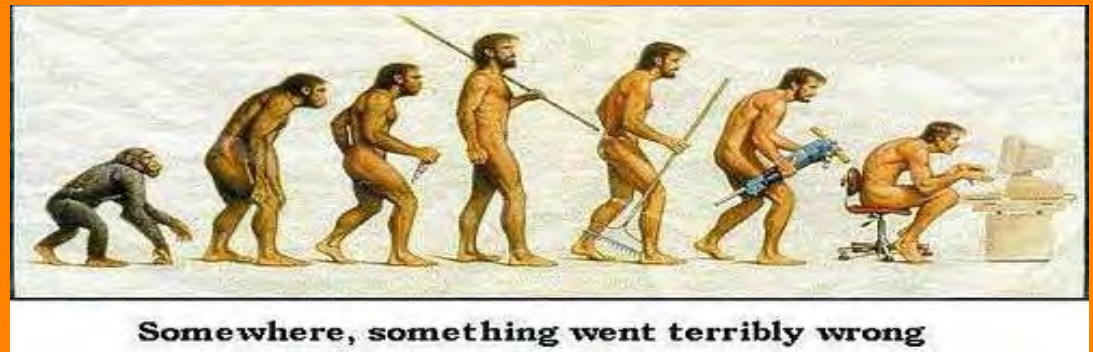
Timeline

- Structuring and tax diligence
- Disclosure document (bonds)
- Adopt bond resolution
- Rating Agency presentation (bonds)
- Pricing



Timeline

- Sign purchase contract
- Closing
- Continuing disclosure
- Post-issuance tax and covenant compliance



Securities Law for Bonds

RULE 15c2-12

Official Statement

RULE 10b-5

Full and fair disclosure



Rule 10b-5

Unlawful, in connection with the purchase or sale of securities in interstate commerce, (a) to employ any device, scheme, or artifice to defraud, (b) **to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading**, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.



Securities and Exchange Commission

- Increased initial and continuing disclosure
- Protection of individual investors
- Regulation of states as issuers
- Enforcement in the absence of defaults



Rule 15c2-12

- Applies to public offerings >\$1 million
- Prior to purchase, underwriter must obtain and review official statement



Official Statement

A document prepared by an issuer of municipal securities that sets forth information concerning the terms of the proposed issue of securities, including financial information or operating data concerning such issuer and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the securities.



Materiality

- Objective Standard
- Substantial likelihood that, under all the circumstances, a fact would assume actual significance in the deliberations of a reasonable investor



Continuing Disclosure

EMMA (emma.msrb.org) is your friend



Tax Considerations

Private Activity and Arbitrage



Post-Issuance Tax Compliance

- Monitoring Use of Bond Proceeds
- Record Retention



Helpful Sources

- **GFOA** (*Government Finance Officers Association*)
- **MSRB** (*Municipal Securities Rulemaking Board – EMMA*)
- **NFMA** (*National Federation of Municipal Analysts*)



Thank you.



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