PUBLIC FINANCE

Grace E. Dunlap
Bryant Miller Olive P.A.

2016 CITY, COUNTY AND LOCAL GOVERNMENT LAW CERTIFICATION COURSE

This presentation addresses the basic constitutional and statutory provisions governing the issuance of debt obligations by cities, counties and local governments in the State of Florida and also covers certain SEC rules regarding disclosure requirements. This presentation is not intended to be an exhaustive reference source on public finance matters in Florida. Rather, it is intended to be a general review of public finance information relevant to attorneys representing cities, counties and local governments. The information included in the written materials has been derived from the written materials prepared for other Florida seminars, as well as the biennial Public Finance in Florida seminars including, in particular, "Overview of Local Government Borrowing Authority," by Randall W. Hanna. The outline has been updated over the years by Grace E. Dunlap and previously by Alexandra M. MacLennan.

TABLE OF CONTENTS

I. SUMMARY OF CLASSIFICATIONS OF MUNICIPAL BONDS

Municipal securities may be classified in several different ways. Under the laws of most states and under Florida law, two significant classifications of public debt are used:

A. General Obligation Bonds

1. A general obligation bond is secured by the full faith and credit of an issuer with taxing power and is secured by a pledge of such taxing power. Article VII, Section 12 of the Florida Constitution provides that counties, municipalities, special districts and local governmental bodies may issue bonds or other indebtedness payable from ad valorem taxation and maturing more than twelve (12) months from issuance only to finance or refinance capital projects authorized by, and when approved by, a vote of the electors.

Therefore, local governments may issue bonds payable from ad valorem taxation and maturing within twelve (12) months without a referendum. Examples include tax anticipation notes, such as those often issued by school districts, and other short-term cash flow financing measures such as commercial bank loans and lines of credit. See also the discussion of obligations which are "subject to annual appropriation" such as equipment leases and certificates of participation discussed below.

2. Bonds subject to the referendum requirement may only be issued for "capital projects." That means the general operating expenses of a government cannot be financed with general obligation bonds.

3. A general description of the provisions of Florida law relating to the holding of a referendum election may be found in Chapter 100 and Chapter 101, Florida Statutes. Additionally, bond referendum matters are discussed in more detail below.

4. Generally, a second referendum is not required for bonds issued to refund or refinance bonds which were subject to the referendum if the refunding or refinancing results in a lower net average interest rate.

B. Revenue Bonds

Revenue bonds are debt obligations as to which the full faith and credit of an issuer with taxing power is <u>not</u> pledged. Revenue bonds are payable from specific sources of revenue, and do not permit the bondholders to compel taxation or legislative appropriation of funds not pledged for payment of debt service. See *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1980). Pledged revenues may be derived from operation of the financed project, grants, fees and excise or other specified non-ad valorem taxes. Generally, no voter approval is required under state law prior to issuance of such bonds. Most bonds issued by local governments in Florida are revenue bonds. See *County of Volusia v. State*, 417 So. 2d 968 (Fla. 1982) for a discussion of how bonds payable from non-ad valorem revenues may be considered an indirect pledge of ad valorem taxation and therefore subject to the referendum requirement described above. See also *Webster v. N. Orange Mem'l Hosp. Tax Dist.*, 187 So. 2d 37 (Fla. 1966).

C. Types of Revenue Bonds

As described above, revenue bonds are generally classified in Florida as all bonds or other debt obligations other than general obligation bonds. These bonds may be categorized in several different classes:

1. Typical Revenue Bonds

Examples of typical revenue bonds include bonds payable from utility revenues, such as water and sewer revenues. However, other examples of revenue bonds include those payable from various sources of non-ad valorem revenues, such as excise taxes, gas taxes or state revenue sharing moneys. Examples of state shared revenues include Guaranteed Entitlement Revenues and the Local Government Half-Cent Sales Tax.

Local governments in Florida also commonly issue bonds secured by a covenant of the local government to budget and appropriate legally available non-ad valorem revenues for the payment of debt service. Such bonds are not secured by a specific lien upon or pledge of specific non-ad valorem revenues. Such covenant is subject to the requirement that the local government pay for all essential governmental services. This type of covenant is structured to address the concerns raised in *County of Volusia v. State* cited above. The question of what constitutes an essential governmental service is subject to judicial interpretation. See *Washington Shores Homeowners' Ass'n v. City of Orlando*, 602 So. 2d 1300 (Fla. 1992) and *State v. Tampa Sports Auth.*, 188 So. 2d 795 (Fla. 1966).

2. Certificates of Participation

In the late 1980's and early 1990's, local governments began searching for additional and innovative methods of financing local government projects. This was especially true for school districts where there are very limited sources of non-ad valorem revenues. Certificates of participation represent an undivided interest in lease payments from a governmental unit. The local government enters into a lease agreement with a not for profit corporation. In order to provide the costs of the project, the trustee sells interests in the lease agreement to outside investors. These outside investors hold a certificate representing the right to participate in the lease payments. The lease is subject to appropriation each year by the governmental unit. The lease term coincides with the fiscal year of the issuer, and if no appropriation is made, the lease terminates. Therefore, this lease may be payable from any revenues of the local government, including ad valorem taxes. See *State v. Sch. Bd. of Sarasota County*, 561 So. 2d 549 (Fla. 1990). See also *State v. Brevard County*, 539 So. 2d 461 (Fla. 1989). Recent case law has confirmed this method of finance. In *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, 48 So. 3d 811 (Fla. 2010), the Florida Supreme Court upheld the validity of certificates of participation to acquire land from U.S. Sugar Corporation for restoration of the Florida Everglades.

3. Equipment Leases

a. Typically used for computer, vehicle and other equipment financings.

b. Annual lease payments are subject to appropriation and no revenue stream is pledged. Very similar to Certificates of Participation discussed above, however, on a smaller scale without the public issuance and sale of participation certificates. However, some form documents from vendors include a covenant to budget and appropriate the lease payments each year, which would make that particular transaction more akin to general revenue bonds.

c. Remedies under an equipment lease should be limited to traditional lease remedies, such as return of property. Foreclosure cannot be a remedy (without a referendum) as discussed below due to the restrictions on a local government's ability to mortgage property or grant a security interest in property (other than a revenue stream).

4. Industrial Development or Private Activity Bonds

a. This broad category includes conduit bonds issued by local Industrial Development Authorities, Housing Finance Authorities, Health Facility Authorities and other governmental units on behalf of an underlying borrower. These bonds may also be issued directly by cities and counties and some other governmental units. These bonds are typically payable solely from revenues derived from loan, lease or installment sale payments with the private party utilizing the bond proceeds.

b. These bonds are specifically authorized by statute: Chapters 243 (Educational Facilities), Chapter 154 (Health Facilities), Chapter 159 (Industrial Development, Housing Development, Research Development).

5. Community Redevelopment Agency/Tax Increment Bonds

Bonds issued under Chapter 163, Florida Statutes for purposes of community redevelopment may be payable from the "tax increment" or the difference between the assessed value of the property before and after the redevelopment project (so called "TIF Bonds"). See *State v. Miami Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980); *Holloway v. Lakeland Downtown Development Authority*, 417 So.2d 963 (Fla. 1982). However, recent case law developments have confirmed this method of finance. In *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008) the Florida Supreme Court reversed its earlier opinion issued in 2007, which had reversed a circuit court's judgment validating TIF Bonds proposed for issuance by Escambia County, and upheld the constitutionality of tax increment financing without referendum approval.

6. Special Assessment Bonds

Since special assessments do not constitute ad valorem taxation, bonds payable from special assessments on property specially benefitted from the improvements are considered revenue bonds.

D. Public Offerings/Private Placements

1. Public Offerings

Bonds offered through an underwriting by an investment banking firm acting on behalf of the government are referred to as "publicly offered." Publicly offered municipal bonds involve the preparation and distribution of offering materials (typically referred to as an Official Statement) to prospective purchasers of the Bonds.

2. Private Placements

Unlike a public offering, a private placement typically involves the purchase of a single Bond for the entire par amount of the issue by a financial institution which will hold the Bond as security for the loan of the proceeds of the Bond to the government.

II. PREREQUISITES TO ISSUANCE

A. Constitutional Restrictions

1. Public Purpose

a. Projects to be financed by municipalities must constitute a valid municipal purpose. Municipalities have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Art. VIII, § 2(b), Fla. Const. See also *State v. City of Sunrise*, 354 So. 2d 1206 (Fla. 1978); *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997).

b. Charter counties have all powers of local self-government not inconsistent with general law. Art. VIII, § 1(f), Fla. Const. See also *State v. Broward County*, 468 So. 2d 965 (Fla. 1985).

c. Non-Charter Counties have such powers of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact county ordinances not inconsistent with general or special law. See *Speer v. Olsen*, 367 So. 2d 207 (Fla. 1978); *State v. Orange County*, 281 So. 2d 310 (Fla. 1973); *Fillingin v. State*, 446 So. 2d 1099 (1st DCA 1984); *Taylor v. Lee County*, 498 So. 2d 424 (Fla. 1986).

d. What constitutes a public purpose has changed over the years. Great deference is paid to a legislative finding of public purpose. Generally, courts will not overturn legislative finding of public purpose unless clearly erroneous. See *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, 48 So. 3d 811 (Fla. 2010); *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008); *Boschen v. City of Clearwater*, 777 So. 2d 958 (Fla. 2001).

2. No Lending of Credit

Article VII, Section 10 of the Florida Constitution, prohibits municipal corporations from giving, lending or using their taxing power or credit to aid any corporation, association, partnership or person. See *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, 48 So. 3d 811 (Fla. 2010), contains a detailed analysis of this constitutional provision and the public purpose test to be met before a municipality's credit may be pledged to a bond issue. See also *Jackson-Shaw Co. v. Jacksonville Aviation Authority*, 8 So. 3d 1076 (Fla. 2008); *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980). The lending of credit test is closely related to the public purpose test described above.

3. No Mortgage

Generally, local governments may not secure debt obligations with a mortgage on public property. See *Nohrr v. Brevard County Educational Facilities Authority*, 247 So. 2d 304 (Fla. 1971). In 1987, the Florida Supreme Court in *Wilson v. Palm Beach County Housing Authority*, 503 So. 2d 893 (Fla. 1982), modified the mortgage restriction to only those governmental units with ad valorem taxing power.

This restriction on mortgages includes granting security interests in property, including purchase money security interests. This issue is raised particularly in the area of equipment and other leasing as discussed above, as well as installment sales. Under this rule, a local government with taxing power may not grant a security interest in public property, absent voter approval.

This rule does not apply, however, to the pledging of a revenue stream to the repayment of debt.

4. Extraterritorial Powers

The exercise of extra-territorial powers by municipalities shall only be as provided by general or special law. Art. VIII, § 2, Fla. Const. Therefore, to extend powers beyond corporate limits of municipality requires specific statutory authority.

Further, Chapter 180, Florida Statutes, authorizes the extension of utility services outside the corporate limits of a municipality. Florida case law does not specify a limitation of the geographic area in which a municipality may extend its municipal utility services. In *State v. City of Cocoa*, 92 So. 2d 537 (Fla. 1957), where the city charter granted the city authority to extend its water system beyond city limits, the court held there was no abuse of authority by the

city in extending its water mains 20 miles beyond city limits when evidence supported the finding of the urgent need for water. The Florida Supreme Court has upheld the exercise of extraterritorial powers, particularly with respect to proprietary projects, by municipalities where such powers are supported by or derived from a legislative grant. See *Town of Riviera Beach v. State*, 53 So. 2d 828 (Fla. 1951); *State v. City of Pensacola*, 197 So. 520 (Fla. 1940); *Town of Palm Beach v. City of West Palm Beach*, 239 So. 2d 835 (Fla. 4th DCA 1970); and *City of Ocala v. Red Oak Farm, Inc.*, 636 So. 2d 81 (Fla. 5th DCA 1994).

B. Statutory Authorization and Statutory Restrictions

1. Typical Revenue Bonds and General Obligation Bonds

Part II of Chapter 166, Florida Statutes, contains the basic home rule power for cities to issue bonds or incur debt. Chapter 125, Florida Statutes, provides basic authority for counties to issue bonds. Other authority is contained in Chapters 132, 153 and 159, Florida Statutes. Interestingly, Chapter 166, Part II, Florida Statutes, authorizes the issuance of revenue bonds for capital or "other projects." See Op. Att'y Gen. Fla. 81-65 (1981).

2. Certificates of Participation

There are certain statutory provisions relating to the lease purchase of facilities for school districts (Section 1013.15, Florida Statutes) and counties (Section 125.031, Florida Statutes). Cities may enter into lease purchase transactions under home rule powers.

3. Industrial Development or Private Activity Bonds

Chapters 159, Parts II and III, Florida Statutes, provides basic authority for issuance of bonds for industrial development. Examples include bonds issued for manufacturing facilities and tourism facilities. These bonds may not be payable from revenues of the issuer, other than revenues received under the loan agreement. See *State v. Dade County*, 250 So. 2d 875 (Fla. 1971); *State v. Putnam County Development Authority*, 249 So. 2d 6 (Fla. 1971); *State v. Leon County, Fla*., 410 So. 2d 1346 (Fla. 1982).

Chapter 154, Part III, Florida Statutes, provides authority for the issuance of bonds to finance health facilities.

Chapter 159, Part III, Florida Statutes, provides authority for the issuance of bonds to finance housing projects, including both single family and multi-family projects. Article VII Section 16 of the Florida Constitution provides that when authorized by law revenue bonds may be issued without an election to finance or refinance housing or related facilities in Florida. Chapter 159, Florida Statutes, provides that each county of the state may create a housing finance authority in order to facilitate the construction and rehabilitation of housing for low income families through the use of public financing.

4. Community Redevelopment Agency and Tax Increment Bonds

Part III of Chapter 163, Florida Statutes, establishes the Community Redevelopment Act. Any county or municipality may create a community redevelopment agency by finding that one or more slums or blighted areas, or one or more areas in which there is a shortage of housing affordable to residents of low or moderate income exist in the community and that rehabilitation, conservation or redevelopment of such an area is necessary in the interest of the public health, safety, morals or welfare of the residents. The purpose of the redevelopment project is the elimination and prevention of the development or spread of slums and blight or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income.

"Slum or blight" may not be limited to typical downtown areas needing revitalization. Section 163.340(8), Florida Statutes, provides a definition and factors to consider for determining a "blighted area". See *Panama City Beach Community Redevelopment Agency v. State*, 831 So. 2d 662 (Fla. 2002) (undeveloped land may qualify as a blighted area.) See also *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008).

Section 163.385, Florida Statutes, authorizes the governing body of a county or municipality to issue redevelopment revenue bonds and refunding bonds to finance any undertaking of any community redevelopment plan.

5. Special Assessment Bonds

a. A special assessment is a charge imposed against property in a particular locality because that property receives a special benefit by virtue of some public improvement, separate and apart from the general benefit accruing to the public at large. Special assessments must be apportioned according to the value of the benefit received, rather than the cost of the improvement, and may not exceed the value of such benefit or the cost of the improvement.

b. Chapter 170, Florida Statutes, is the general law providing for special assessments for municipalities. Assessments for counties are generally levied pursuant to an ordinance enacted under Chapter 125, Florida Statutes.

c. Chapter 170, Florida Statutes, authorizes special assessments for statutorily enumerated projects. Section 170.11, Florida Statutes, provides that bonds may be issued to an amount not exceeding the amount of liens assessed for the cost of improvements to be paid by special assessment. The equalization, approval and confirmation of the levying of the special assessments for improvements must be completed before the governing authority authorizes the issuance of the bonds.

d. An alternative form of authority may be in the form of a municipal ordinance adopted in accordance with home rule powers. In *City of Boca Raton v. State*, 595 So.2 d 25 (Fla. 1992) the Florida Supreme Court held that a City has the power to impose special assessments under its home rule power. Thus, municipalities are able to broaden the qualifying

projects and simplify the procedural requirement by an enactment of alternative authority for the imposition of special assessments.

e. Chapter 153, Florida Statutes, also provides statutory authority for the imposition of special assessments by counties in connection with improvements to a water and sewer system, as well as the authority for the issuance of bonds for water and sewer system improvements, including acquisitions.

f. Special assessments and home rule powers in general are addressed in a separate outline.

6. Others

a. Chapter 159, Part IV, Florida Statutes, provides the procedure for issuing taxable bonds.

b. Chapter 190, Florida Statutes, provides authority for issuance of bonds by Community Development Districts.

c. Chapter 189, Florida Statutes, provides restrictions on issuance of certain types of debt by special districts.

C. Charter and Ordinance Restrictions

In addition to constitutional and statutory restrictions, practitioners should be aware the local charters and ordinances may contain additional restrictions for issuance of debt. Typical examples include requirements that all bonds be signed by City Attorney. However, more significant restrictions may be contained in a charter. See *State v. Sarasota County*, 549 So. 2d 659 (Fla. 1989) (providing that charter prohibited issuance of bonds secured by taxes).

Authorization of bonds by ordinance will not repeal any conflicting provisions of ordinances of local government.

D. Contractual Restrictions

A review of possible contractual prohibitions should be made prior to the issuance of the bonds. Examples typically include "parity" provisions in outstanding bond documents regarding whether the debt sought to be issued may have equal lien status with the existing debt. In covenant to budget and appropriate transactions, an anti-dilution test may be present which provides that no debt will be issued unless non-ad valorem revenues are at certain levels. Other documentary provisions may include restrictions on use of revenues and consent procedures from credit enhancers or bondholders.

Additional restrictions may also be found in contractual documents with vendors, credit providers and other contracting parties with local governments.

E. Pledge and Lien on Revenues

Most local governments typically issue bonds payable from a specific revenue. In order to secure payment, the bond resolution or ordinance typically provides for the creation of various funds and accounts to provide a tracking of the pledged revenues. These provisions also ensure the revenues are in trust funds. Security arrangements are particularly important to holders of revenue bonds, who cannot look to the ad valorem taxing power of the issuer for repayment.

Bondholders often require attorneys to provide a legal opinion to the effect that the security interest in revenues is valid and binding. Outside of the public arena, laws regarding the creation and perfection of security interests are contained in Article 9 of the Uniform Commercial Code. In 2001, the Florida legislature adopted revisions to Florida's Uniform Commercial Code relating to secured transactions (Chapter 679, Florida Statutes). Under the rewritten code, transfers by governments and governmental units continue to remain exempt from the provisions of the uniform commercial code relating to secured transactions. § 679.1091(4)(n), Fla. Stat. (2016).

The creation of a pledge of revenues may be accomplished through a trustee or through the creation of trust funds and accounts. Most Florida statutes providing for issuance of bonds also include language regarding the validity of a pledge.

If validly pledged, the revenues may not be repealed by the local government or the Florida Legislature because of the protection of the Contracts Clause in Article I, Section 18 of the Florida Constitution. However, with revenues not controlled by local governments, it is important to find specific authority to pledge such revenues and to ensure that the Legislature has not reserved the right to revoke this funding source in the future or been silent on the issue.

The Impairment of Contracts doctrine is a clause to both federal and state Constitution Law. See Art. I, § 10, U.S. Const. ("No state shall. . .pass. . .any law impairing the Obligation of Contracts. . ."); Art. I, § 18, Fla. Const. ("No law. . .impairing the Obligation of Contract shall be passed.") Historically, the Legislature has taken great care to ensure that bondholders secured by revenues that are affected by state law are not negatively affected. See Section 202.41, Florida Statutes, providing that revenue received by a taxing authority under the communities services taxes shall redeem to replace any taxes or fees repeated by that act. Absent specific authority to pledge the revenues, however, there may be some cause for concern that the Legislature may reduce amounts from revenue sharing without replacing such revenue sources elsewhere.

III. BOND VALIDATION

A. Chapter 75, Florida Statutes, provides for circuit court validation proceedings confirming the legality and authority for the issuance of bonds, bonded debt, certificates of debt and matters related thereto, prior to the issuance of such obligations. The issuer files the validation action and seeks an order to show cause why the bonds should not be validated and the local state attorney defends the action.

B. Case law also addresses validation of interlocal agreements under which a local government is obligated to make payments and lease purchase agreements.

C. Issues to be considered in a validation proceeding include the validity of the bonds, or other obligations, the validity of any taxes, assessments or revenues which are pledged for the repayment of the bonds, the proceedings authorizing the issuance of the bonds and any remedies provided for their collection. See *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, 48 So. 3d 811 (Fla. 2010); *Strand v. Escambia County*, 992 So. 2d 150 (Fla. 2008).

D. Collateral issues should not be considered.

1. Collateral issues do not need to be decided to determine the validity of the bonds, however, the issues are related to the bonds and are often material to the economic viability of the bond issue.

2. Examples of collateral issues include:

a. The wisdom or expedience of a bond issue, *Speer v. Olson*, 367 So. 2d 207 (Fla. 1978);

b. The possibility that revenues will be insufficient to meet the obligations incurred, *National Airlines v. Dade County*, 76 So. 2d 277 (Fla. 1954);

c. The necessity or feasibility of the improvements to be funded with the bonds, *Partridge v. St. Lucie County*, 339 So. 2d 472 (Fla. 1989);

d. The financial and economic feasibility of issuing the bonds in question, *State v. City of Daytona Beach*, 431 So. 2d 981 (Fla. 1983);

e. The exemption of the bonds from taxation, *State v. City of Miami*, 157 So. 13 (Fla. 1934);

f. The tax-exempt status of the issuer, *Wald v. Sarasota County Health Facilities Authority*, 350 So. 2d 763 (Fla. 1978); and

g. The validity of contracts collateral to the issuance of the bonds, *State v. Sarasota County*, 159 So. 797 (Fla. 1935).

E. Independent Special Districts must allege in the complaint the creation of a trust indenture established by the petitioner for a bonded trustee acceptable to the court who shall certify the proper expenditure of the proceeds of the bonds.

F. Procedural matters

1. Validation proceedings are filed in Circuit Court.

2. Chapter 75, Florida Statutes, provides that the plaintiff in a bond validation proceeding is the issuer of the bonds (e.g., county, municipality, taxing district or other political district of the state). State Attorney is served with complaint and represents "defendant" State and property owners, although property owners and affected persons may intervene.

3. Statute requires Order to Show Cause to be published once a week for 2 consecutive weeks, the first publication at least 20 days prior to hearing date.

4. The only necessary parties are the bond issuing entity and the State. See *State v. Osceola County*, 752 So. 2d 530 (Fla. 2000).

5. Florida Statutes provide direct appeal of validation orders to the Florida Supreme Court.

G. Effect of Validation

1. Binding effect of validation is based upon the doctrine of res judicata which is specifically addressed in Chapter 75, Florida Statutes.

2. Validation judgments may still be subject to collateral attack with respect to issues not raised and adjudicated in validation proceedings.

IV. BOND REFERENDA MATTERS

A. Chapter 100, Florida Statutes, provides for specific procedures for bond referenda, but generally, procedures applicable to general elections are applicable to bond referenda.

B. If a bond issue is defeated at referendum, no other referendum may be held with respect to such bonds for the same purpose for a period of 6 months.

C. Ballot must include the amount of bonds to be issued, a statement as to the purpose for the bonds, and the rate of interest on the bonds; although a statement that the interest rate shall not exceed the maximum rate permitted by law is sufficient.

D. Notice of the bond referendum must be published in a newspaper of general circulation at least 30 days prior to the election, at least twice, once in the fifth week and once in the third week prior to the week in which the election is to be held.

E. Any taxpayer may bring a test suit within 60 days of the election to test the validity of the referendum. However, if the issuer institutes a bond validation proceeding, then any such taxpayer is bound to intervene in such validation proceeding. The court hearing the bond validation proceeding is given exclusive jurisdiction to determine the validity of the referendum.

V. STATE REPORTING AND DISCLOSURE REQUIREMENTS

A. Definitions

1. "Unit of local government" means, in addition to counties and municipalities, special districts, local agencies, authorities, consolidated city-county governments or any other local governmental body with the power to issue general obligation or revenue bonds.

2. "General Obligation or revenue bonds" includes debt obligations issued by units of local government which mature in more than one year, including general obligation bonds, revenue bonds, limited revenue bonds, special obligation bonds, debenture, and other similar instruments, but not bond anticipation notes.

B. Provision of Notice

Every unit of local government is required to provide the Division of Bond Finance with advance written notice of the impending sale of its general obligation or revenue bonds. Public notice rules must be complied with for all local government meetings and sunshine rules should be adhered to.

C. Bond Information Forms (Combined Form 2003/2004)

1. As soon as possible after bonds are issued, Form 2003/2004 must be filed with the Division of Bond Finance.

2. Form 2003 includes general information about bonds, including names and addresses of participants.

3. Form 2004 (separate versions for competitive and negotiated sale) includes required disclosure of any fee paid by underwriter and issuer as well as underwriting spread components and other attorney and consultant fees paid; both must be signed and filed within 120 days of issuance.

4. Form 2004 forms need not be filed for certain conduit financings (industrial development bonds, health facilities revenue bonds, educational facilities revenue bonds).

D. Units of local government must also file copy of final official statement (disclosure document) if prepared.

E. Failure to Comply

A failure to comply with these reporting requirements may be reported to the Legislative Auditing Committee and could result in withholding of state funds.

F. Underwriters Disclosure Statement and Truth in Bonding Statement

1. Disclosure of fees paid by underwriter, including any finder's fee, must be made prior to sale of bonds.

2. Finder's Fee must be disclosed in Official Statement for bonds.

3. Truth in Bonding Statement must be included in any proposal for the purchase of bonds. The statement must include identification of source of repayment for the bonds and the amount of funds not available for other uses during term of bonds, as well as the forecasted rate of interest on the bonds.

G. Bonds of local governments must be sold at public sale by competitive bid unless certain findings have been made. Notice of sale must be published at least 10 days prior to sale. Bonds may be sold by negotiated sale if the governing body shall, by resolution adopted at a public meeting, determine that a negotiated sale is in the best interest of the issuer.

H. Section 215.84, Florida Statutes, sets forth the maximum rate of interest for local government bonds, excluding bonds rated in any one of the three highest rating categories by a national rating service (Moody's Investor Services, Inc., Standard & Poor's Rating Group, etc). Chapter 159, Part VII, Florida Statutes, sets forth a higher rate for taxable bonds. An issuer may apply to the State Board of Administration for an exemption from these requirements. A statutory formula is given for variable rate transactions.

VI. ASSESSMENT VS. TAX VS. USER FEES VS. IMPACT FEES

A. Assessments are charges assessed against the property of some particular locality because that property derives some special benefit from the expenditure of funds.

1. Two requirements for the levy of special assessments: (1) the property must be a special benefit from the service provided or project constructed, and (2) the assessment must be fairly and reasonably apportioned among properties that receive the special benefit.

2. If a special assessment fails to meet the Florida case law requirements of special benefit and fair apportionment applicable to their imposition, then the charges imposed are taxes. If a charge is a tax, it must be authorized by general law.

B. Collection of the special assessment may be secured by a lien on the benefitted property, enforceable through foreclosure proceedings. Additionally, Section 197.3632, Florida Statutes, provides for the collection of non-ad valorem assessments by including these assessments on the annual tax bill. Enforcement proceedings applicable to taxes are then available for the enforcement of assessments, including sale of tax certificates.

C. User Fees are authorized by statute to be imposed directly by municipalities and charter counties (Section 166.201, Florida Statutes) and indirectly for non-charter counties

(Chapter 125, Florida Statutes) through the use of municipal service taxing or benefit units for various governmental purposes.

1. User fees are payments for voluntarily purchased services which benefit the specific individual to the exclusion of non-feepayers.

2. The Florida Supreme Court struck down a transportation utility fee, stating that such fee was in reality a tax because it sought to charge for a general government service (maintenance of public roads). See *State v. City of Port Orange,* 650 So. 1 (Fla. 1994). However, in *Pinellas County v. State*, et. al, 776 So. 2d (Fla. 2001), a mandatory reclaimed water "availability fee" was found not to be a tax, but a valid utility user fee even though the reclaimed water might not actually be utilized.

D. Impact Fees are fees imposed by local government to offset the cost of new development on existing facilities and are valid to the extent that the fees do not exceed a pro rata share of the reasonably anticipated costs of expansion, where expansion is reasonably required, and the use of the fees is limited to meeting the cost of expansion.

1. Local governments must show a reasonable connection between the need for additional capital facilities and the growth in the population generated by the development;

2. Local government must also demonstrate there is a reasonable connection between the expenditure of funds collected and the benefits accruing to the development.

3. Impact fees are generally imposed for water and sewer facilities, road facilities and parks and recreational facilities.

4. The Florida Supreme Court has upheld impact fees for education facilities, however, seemed to retreat to a home rule power analysis, rather than comparing impact fees to user fees as in prior cases.

VII. SPECIAL DISTRICTS

A. Uniform Special District Accountability Act of 1989 (Chapter 189, Florida Statutes) governs creation, dissolution, meeting notices, reporting, elections and other requirements for special districts.

B. "Special District" means a local unit of special purposes, as opposed to general purpose government, within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. The term does not include school districts, a community college district, a special improvement district created pursuant to Section 285.17, Florida Statutes, a municipal service taxing or benefit unit as specified in Section 125.01, Florida Statutes, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

C. "Dependent special district" means a special district that meets at least one of the following criteria:

1. The membership of its governing body is identical to that of the governing body of a single county or a single municipality.

2. All members of its governing body are appointed by the governing body of a single county or a single municipality.

3. During their unexpired terms, members of the special district's governing body are subject to removal by the governing body of a single county or a single municipality.

4. The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or a single municipality.

D. "Independent special district" means a special district that is not a dependent special district as defined above. A district that includes more than one county is an independent special district.

E. Special districts are now required to maintain an official website. The information required to be accessible on their website is listed in Section 189.069, Florida Statutes.

F. Bonds issued by special districts (other than Bonds approved by a referendum) must meet one of the following criteria:

1. The bonds were rated in one of the highest four ratings by a nationally recognized rating service;

2. The bonds were privately placed with or otherwise sold to accredited investors;

3. The bonds were backed by a letter of credit from a bank, savings and loan association, or other creditworthy guarantor, or by bond insurance, guaranteeing payment of principal and interest on the bonds; or

4. The bonds were accompanied by an independent financial advisory opinion stating that estimates of debt service coverage and probability of debt repayment are reasonable, which opinion was provided by an independent financial advisory, consulting, or accounting firm registered where professional registration is required by law and which is in good standing with the State and in conformance with all applicable professional standards for such opinions.

VIII. INVESTMENT POLICIES AND PROCEDURES

A. Several legal documents may control the investment of funds by cities, counties and other local governments.

B. Specific statutory authority for counties (Section 125.31(1), Florida Statutes); cities (Section 166.261, Florida Statutes); school boards (Section 236.24(2)(a), Florida Statutes); and special districts (Section 218.345(1), Florida Statutes).

C. Additionally, Section 218.415, Florida Statutes, limits the types of investments which may be used for the investment of surplus funds of local governments to certain investments listed in the statute.

D. Local Governments cannot invest in any investment other than the listed investments unless the local government has adopted a formal written investment policy, which is required to place primary priority on the safety and liquidity of funds and secondary priority on the optimization of investment returns.

E. Investments in derivative financial products must be specifically authorized and may be considered only if the chief financial officer has developed sufficient understanding of the derivative products and has the expertise to manage them. The use of reverse repurchase agreements or other forms of leveraged investments shall be prohibited or limited to transactions where the proceeds are intended to provide liquidity and for which the unit of local government has sufficient resources and expertise.

IX. DISCLOSURE REQUIREMENTS

A. Bonds of a local government which are publicly sold (by competitive bid or negotiated sale) are typically sold by an underwriter through the use of a disclosure document (usually an "official statement"). The official statement includes a description of the terms of the bonds, the security for the bonds and financial information about the issuer and the source of payment (water and sewer revenues, sales tax, ad valorem taxes, etc).

B. The official statement speaks only as of its date and must be complete and accurate as of its date in order to comply with the antifraud provisions of the securities laws.

C. In November 1994, the SEC released some amendments to Rule 15c2-12 (the "Amendments"), which effectively require issuers to commit to continuing disclosure as a condition to access to the public bond markets. A summary of these initial amendments is set forth below. In July 2009, pursuant to Release No. 34-59062, the SEC adopted additional amendments to the Rule. See “E” below. In May 2010, pursuant to Release No. 34-62184, adopted additional amendments to the Rule. See "F" below.

D. Key Elements of 1994 Amendments to Rule 15c2-12

1. Except for certain exemptions, the Amendments require the issuer or other obligated person for which information is provided in the final official statement (either individually or in combination with other issuers or obligated persons) to covenant to provide both annual financial information (and audited financial statements, if and when available) and material event disclosure. As a practical matter, if neither the issuer nor an obligated person agrees to the required continuing disclosure undertaking, the Offering will be effectively shut out of the municipal securities market under the Rule, unless the issue qualifies for one of the exemptions.

2. Content and Location of Covenant

a. The continuing disclosure undertaking must specify (a) the type of financial information and operating data to be provided, (b) the obligated persons to whom it will relate, (c) the accounting principles to be applied in the preparation of such information, and (d) the annual date such information will be provided and to whom it will be provided.

b. The continuing disclosure undertaking must be set out in a written agreement or contract, which may be the bond resolution or ordinance, trust indenture or other agreement. The key is that the agreement must be for the benefit of the bondholders.

3. "Obligated Persons"

The continuing disclosure undertaking is required of the issuer or other obligated person for whom information is provided in the final official statement.

An "obligated person" is defined to mean a person who is either generally, or through an enterprise, fund or account of such person, committed by contract or other arrangement to support payment of all or part of the obligations on municipal securities, other than providers of municipal bond insurance, letters of credit or other liquidity facilities.

An entity may be an obligated person even though it has no direct contract with holders of the securities. For example, the obligations supported by the obligated person can be obligations which run only to the issuer, such as a lease, loan agreement or other conduit structure or purchase agreement, a take-or-pay contract, or other contract or arrangement structured to support payment of the obligations relating to the municipal securities.

a. Annual Information

(1) The annual information required by a continuing disclosure undertaking includes annual financial information for each obligated person for whom financial information or operating data was included in the final official statement and, if not submitted with the annual financial information, includes annual audited financial statements if and when available.

(2) The annual financial information must be filed. The timing of the annual filing is not prescribed in the Rule; rather, it is to be set forth in the undertaking.

b. Material Event Notices. The Amendments require the following events, if material, be disclosed in a timely manner:

- Principal and interest payment delinquencies
- Nonpayment related defaults
- Unscheduled draws on reserves reflecting financial difficulties
- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions or events affecting tax-exempt status of the security
- Modifications to rights of security holders
- Bond calls
- Defeasances
- Release, substitution or sale of property securing repayment of the securities
- Rating changes
- Tender offers
- Bankruptcy, insolvency, receivership or similar proceeding of the obligated person
- The consummation of certain mergers, consolidations, or acquisitions
- Appointment of a successor or additional trustee, or the change of name of a trustee, if material.

See also F.5. below.

c. Failure Notice. Additionally, the issuer or obligated person must make certain notifications in the event the required annual financial information is not provided on or before the date required in the written undertaking.

4. Exemptions from the Rule. The preexisting exemptions in Rule 15c2-12 (private placements, short term issues and obligations subject to tender for purchase) also apply to the undertaking requirement and information systems requirement relating to continuing secondary market disclosure. Additionally, the Rule includes additional exemptions from the continuing disclosure requirement as discussed below.

a. Small Issuer Exemption. The Rule provides relief from aspects of the continuing disclosure undertaking requirement if at the time the securities are delivered (i) no one obligated person (including the issuer, when it is an obligated person) will be an obligated person with respect to more than $10,000,000 in the aggregate of outstanding municipal

securities, excluding securities exempt under the existing Rule 15c2-12 exemptions, (ii) an issuer or obligated person agrees to provide (A) upon request to certain entities financial information or operating data as described in the continuing disclosure undertaking, and (B) the material events notices described above to the Municipal Securities Rulemaking Board (known as the "MSRB"), and (iii) the final official statement includes the name, address and telephone number of the appropriate persons from which the foregoing information, data and notices may be obtained.

b. Short-term Securities Exemption. Securities with a maturity of 18 months or less are exempt from the requirement that there be a covenant to provide annual information, but not from the material event notice covenant requirement.

E. 2009 Amendments

1. Summary. The Commission, pursuant to Release No. 34-59062 (the "Release") adopted amendments to the Rule in connection with the adoption and implementation of the MSRB's EMMA system for municipal securities disclosures. The effective date of the amendments was July 1, 2009 (with certain document formatting requirements beginning January 1, 2010). In a nutshell, the new amendments provide for the electronic submission of continuing disclosure documents, in a specified format and accompanied by specified identifying information, to the MSRB alone, and no longer to the NRMSIRs. All references to NRMSIRs and SIDs have been deleted from the Rule; however, state law requirements for SID submission still applies to those issuers and obligated persons subject to such disclosure requirements. Access to the Electronic Municipal Market Access ("EMMA") system is free to the public, although there is an optional subscription to a fee-based real-time data stream.

2. MSRB as Repository. As mentioned above, the most sweeping change was to eliminate the terms NRMSIR and SID from the Rule. The MSRB is now the only repository referenced in the Rule. Submissions must be made electronically and accompanied by certain identifying information. The amendments will also require that the underwriter reasonably determine that the issuer or obligated person has undertaken in writing to accompany continuing disclosure documents submitted to the MSRB with identifying information as prescribed by the MSRB. The Rule does not identify the information that must accompany the submission nor the electronic form that they must take, but states that the MSRB may prescribe such criteria. No changes were made to the exemptions in (d)(1) of the Rule by the 2009 Amendments – i.e., exemption for securities with denominations of $100,000 or more AND limited offering to sophisticated investors, maturity of nine months or less, OR variable rate debt with put option with a frequency of at least every nine months. See, however, F.6. below.

F. 2010 Amendments

1. Summary. The SEC, continuing with its current theme of improving the quality, timing and dissemination of disclosure in the municipal securities market, issued Release No. 34-62184 (the "Release"), which provides for certain amendments to Rule 15c2-12. The amendments to the Rule affect the secondary market disclosure requirements of the Rule, which require brokers, dealers, and municipal securities dealers ("Dealers" or, when used in connection with a primary offering, a "Participating Underwriter"), prior to purchasing or selling municipal

securities in connection with an offering, to reasonably determine that an issuer of such municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement, has undertaken in a written agreement to provide to the holders of such securities certain financial information and to report the occurrence of certain materials events relating to the securities. The amendments became effective August 9, 2010, with a compliance date of December 1, 2010.

2. Timeframe for Submitting Event Notices. The SEC has modified the Rule to require a Participating Underwriter to reasonably determine that the issuer or obligated person has agreed in its continuing disclosure agreement to submit notices of certain material events to the MSRB "in a timely manner not in excess of ten business days after the occurrence of the event," instead of just "in a timely manner," as the Rule previously provided. This amendment ties the ten business days to the occurrence of the specific event, as opposed to knowledge of such an event by the issuer or obligated person.

3. Materiality Determinations. The SEC has deleted the condition in the Rule that presently provides that notices of all of the listed events need be made only "if material," and removed the materiality determination for certain events.

4. Event Notices Regarding Adverse Tax Events. The current Rule provides for an event disclosure for "adverse tax opinions or events affecting the tax-exempt status of the security," if material and the 2010 amendments to the Rule provide for certain other specific tax matters to be disclosed.

5. Additional of Events to be Disclosed. The amendments to the Rule also include four additional events that must be disclosed in an event notice. These events include: (1) tender offers; (2) bankruptcy, insolvency, receivership or similar proceeding of the obligated person; (3) the consummation of certain mergers, consolidations, or acquisitions; and (4) appointment of a successor or additional trustee, or the change of name of a trustee, if material.

6. No longer an Exemption for Demand Securities. The current Rule provides for an exemption from the annual financial and operating data reporting and material event notice requirements for a primary offering of municipal securities in authorized denominations of $100,000 or more if such securities, at the option of the holder, may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent. The SEC has deleted this exemption.

7. Additional and Voluntary Disclosures to the MSRB. The SEC has also given approval to the MSRB to accept additional types of filings on its Electronic Municipal Market Access (EMMA) website. Underwriters of municipal securities will be required to provide – and issuers will be able to provide voluntarily – information to assist investors and other market participants in assessing the availability of ongoing disclosures made by issuers through the EMMA website.

G. Municipalities Continuing Disclosure Cooperation Initiative

1. The SEC rolled out its Municipalities Continuing Disclosure Cooperation Initiative (the "MCDC Initiative") which intended to address what the SEC views as potentially widespread violations of the federal securities law by municipal issuers and underwriters of municipal securities.

2. Municipal issuers who may have made materially inaccurate statements in a final official statement regarding their prior compliance with their continuing obligations as described in Rule 15c2-12 were given the opportunity to self-report to the SEC to take advantage of the MCDC Initiative.

3. The program was open for filings in 2014 and the self-reporting period has now closed. Filings were not made public and the SEC is now entering into enforcement actions and settlements. Inquires can be directed to MCDCinquiries@SEC.gov.

X. POST ISSUANCE COMPLIANCE

A. The IRS is pushing for heightened compliance practices by issuers, most recently in 2012 by requiring issuers to certify on Form 8038 and Form 8038-G that they have written procedures in place to monitor and remediate any nonqualified tax-exempt bonds.

B. In 2012, the IRS reported the results of a compliance check on governmental bond issuers. While a majority of issuers reported that they had written compliance procedures in place, the IRS found that fewer than 20% of issuers had implemented specific written procedures or ad hoc processes at the level the IRS deems appropriate.

C. A compliance plan is intended to provide written procedures for handling matters that arise after issuance of bonds. The plan should detail record retention policies, private use monitoring, arbitrage rebate and yield restriction, expenditure of bond proceeds, remedial actions and other issues that may arise over the life of a bond issue.

D. Also, the IRS recently released its Publication 5005, Your Responsibilities as a Conduit Issuer of Tax-Exempt Bonds, which provides an overview for state and local governments of the responsibilities of the conduit issuer with respect to tax compliance in municipal financing arrangements commonly known as conduit financings. Because the conduit issuer is treated as a "taxpayer" for federal tax purposes and procedures, the issuer is the party generally responsible for tax compliance. However, the bond documents generally provide for delegation of certain responsibilities to the conduit borrower.

E. Publication 5005 lists several items the IRS suggests that issuers consider when developing such post-issuance compliance procedures:

1. Designating a particular conduit issuer official to assist in post-issuance compliance;

2. Requiring conduit borrowers to identify a particular official responsible for assisting the issuer with post-issuance compliance monitoring;

3. Providing training or other technical support to designated official(s) of the conduit issuer and conduit borrower;

4. Requiring the conduit borrower to demonstrate that it has adopted written post-issuance compliance monitoring procedures before the approval of a bond issue;

5. Designating time intervals within which compliance monitoring activities will be completed by the issuer and borrower;

6. Timely completing remedial actions to correct or otherwise resolve identified noncompliance; and

7. Requiring conduit borrowers to notify the conduit issuer of the completion of post-issuance compliance monitoring activities.

F. In summary, local government issuers of tax-exempt bonds should have in place compliance programs to monitor and document activities post issuance. This encourages the prevention of problems and timely remediation should a problem arise.

XI. MUNICIPAL BANKRUPTCIES

A. Florida Law

1. Florida is one of 12 states that conditionally authorizes municipal bankruptcies.

2. Florida Statute 218.01 is the authorizing authority for the bankruptcy laws "for the benefit and relief of municipalities, taxing districts and political subdivisions."

3. States cannot file bankruptcy cases (sovereign).

B. Federal Law

1. Chapter 9 of the Federal Bankruptcy Code provides for financial reorganization.

2. Purpose of filing to provide financially distressed governments protection from creditors while reorganizing to become fiscally stable.

C. Chapter 9 Eligibility

1. The municipality must have specific authority to file for Chapter 9 bankruptcy from the state;

2. The municipality must be insolvent.

3. The municipality must prove its desire to adopt a plan to adjust its debt;

4. The municipality must satisfy at least one of four specified conditions to demonstrate that it has obtained or tried to obtain an agreement with its creditors, that it is not feasible to negotiate with its creditors holding at least the majority of the claims in each class that the entity intends to impair under its debt adjustment plan, or that it has reason to believe its creditors might attempt to obtain preferential payment or transfer of the entity's assets; and

5. The municipality must show that it has filed for bankruptcy in good faith.

APPENDIX A

REVIEW QUESTIONS--PUBLIC FINANCE

True or False:

1. Local governments in Florida can issue bonds backed by the taxing power of the local government without a referendum if such bonds mature in less than five years from the date of issuance.

2. General obligation bonds maturing more than one year from the date of issuance can be issued only for capital projects or refunding purposes.

3. If a local government defaults on the payment of traditional revenue bonds, a bondholder can compel the local government to levy additional ad valorem taxes if necessary to pay the principal and interest on the revenue bonds.

4. Special assessment bonds are not payable from ad valorem taxes and are considered revenue bonds for purposes of the constitutional referendum requirement.

5. The Constitution of the State of Florida, prohibits cities, counties and local governments from giving, lending or using their taxing power to credit or aid any corporation.

6. Local governments may only incur debt for a valid public purpose.

7. Local governments may, without voter approval, purchase vehicles under an installment sale contract under which the seller retains a purchase money security interest in the vehicle.

8. Chapter 170, Florida Statutes, is the only method by which cities and counties may levy special assessments and issue special assessment bonds.

9. Cities, counties and other local government entities in Florida are prohibited from issuing bonds unless the interest is exempt from federal income taxation.

10. Existing ordinances and/or resolutions may limit the ability of a local government from issuing debt.

11. In determining whether a local government has duly created and perfected a security interest in pledged revenues, the requirements of Chapter 679, Florida Statutes (Uniform Commercial Code), must be satisfied.

12. Chapter 75, Florida Statutes, provides a judicial proceeding pursuant to which bonds of a Florida local government can be declared valid prior to the issuance of such bonds.

13. Interlocal Agreements can be validated in circuit court under Chapter 75, Florida Statues, if the agreement includes a payment obligation on the part of the local government.

14. Independent special districts must allege the creation of a trust indenture in a complaint for the validation of bonds to be issued by such special district.

15. Complaints for the issuance of bonds by a local government must be served upon the State Attorney for the circuit in which the complaint is filed.

16. Appeals of bond validations are filed with the District Court of Appeal.

17. If a bond issue is defeated at referendum, a new referendum can be held on the same bond issue no earlier than three months from the date of the first referendum.

18. Notice of a bond referendum must be published at least 30 days prior to the referendum, at least twice, once in the third week and once in the fifth week prior to the date of the referendum.

19. If the issuer initiates a bond validation proceeding after a bond referendum, a taxpayer may still bring a separate test suit to determine the validity of the referendum.

20. Bond information forms required to be filed with the Division of Bond Finance must be filed for all bonds issued by a local government in Florida, including conduit financings and obligations maturing in less than one year.

21. Failure to comply with the reporting requirements is a capital offense, punishable by death or life in prison for the chief financial officer of the local government.

22. All fees paid by an underwriter in connection with the purchase of local government bonds must be disclosed to the issuer prior to the sale of such bonds, but no fees, including finders fees, have to be disclosed in the official statement for the bonds.

23. Notice of the sale of bonds by a local government must be published at least 30 days prior to the sale date.

24. There are no limitations on the rate of interest which local government bonds may bear.

25. If the members of a special district's governing body are subject to removal by the governing body of a single county, the special district is a "dependent special district."

26. A district that includes more than one county is always an independent district.

27. Only local resolutions and ordinances govern the investment of funds by a local government.

28. There are no limitations on the investment of local government funds in derivative financial products, other than local ordinances or resolutions.

29. If a local government reasonably expects the project financed with proceeds of its tax-exempt bonds to comply with tax law at the time of issuance no continuing compliance is legally required.

Multiple Choice:

1. Local governments may issue bonds payable from ad valorem taxes without a referendum if such bonds:
   (a) mature within 12 months
   (b) mature within 24 months
   (c) mature within 5 years
   (d) none of the above

2. Bonds subject to the referendum requirement may be issued for:
   (a) any public purpose
   (b) only capital projects
   (c) capital projects or operating expenses
   (d) any purpose approved at referendum

3. Bonds secured by a covenant to budget and appropriate legally available non-ad valorem revenues for the payment of debt service are:
   (a) not permitted under Florida law
   (b) permitted but must be validated first
   (c) permitted but only for cities and charter counties
   (d) permitted

4. Local governments with taxing power may not grant a security interest in public property unless:
   (a) the security interest is a purchase money security interest and the creation thereof is approved by ordinance after a public hearing
   (b) the creation of such security interest is approved at referendum
   (c) a super majority of the governing body of the local government approves after a public hearing
   (d) none of the above

5. Authority for a charter county to levy special assessments and issue bonds secured by a pledge of such special assessments is found in:
   (a) Chapter 125, Florida Statutes
   (b) Chapter 170, Florida Statutes
   (c) Home Rule Powers
   (d) all of the above

6. Restrictions on a local government's ability to issue or incur debt may be found in:
   (a) Constitution, charter, statutes, ordinances, resolutions and contracts
   (b) Constitution and statutes only
   (c) Constitution, charter and statutes only
   (d) none of the above

7. Once a local government irrevocably pledges revenues to the payment of its bonds, this pledge can be revoked if:
   (a) the bonds are no longer outstanding
   (b) the local government replaces revenues with equally credit-worthy payment source
   (c) the revenues pledged were state revenues and the state reserved the right to revoke the funding source
   (d) (a) and (c)

8. An Order to Show Cause in a bond validation proceeding must be published:
   (a) once a week for four weeks, the first publication at least 30 days prior to the hearing date
   (b) once at least 20 days prior to the hearing date
   (c) once a week for two weeks, the first publication at least 20 days prior to the hearing date
   (d) none of the above

9. Which of the following would <u>not</u> be proper for judicial review in a bond validation hearing?
   (a) Whether the capital project to be financed is economically feasible
   (b) Whether local government complied with applicable election procedures in conduct of bond referendum
   (c) Whether an interlocal agreement which obligates a local government to pay money is valid
   (d) Whether remedies provided in a bond resolution are enforceable
   (e) all of the above
   (f) none of the above
   (g) A and D only
   (h) A only

10. If a bond issue is defeated at referendum, no other referendum may be held with respect to such bonds for the same purpose for a period of:
   (a) 90 days
   (b) one year
   (c) six months
   (d) none of the above

11. Notice of bond referendum must be published:
    (a) once, at least 45 days prior to the election
    (b) at least twice, once in the fifth week and once in the third week prior to the week of the election, the first publication of which must be at least 30 days prior to the election
    (c) once a week for three weeks, the first publication of which must be at least 45 days prior to election
    (d) none of the above

12. Local governments must provide advance notice of sale to the Division of Bond Finance for:
    (a) all debt obligations of a local government
    (b) general obligation bonds only
    (c) general obligation and revenue bonds, but only if the bonds mature in more than one year
    (d) general obligation bonds and revenue bonds, but not special assessment bonds

13. Form 2004, with respect to sale information must be filed:
    (a) for all general obligation bonds and revenue bonds maturing in more than one year, but not bond anticipation notes
    (b) same as (a) but excluding conduit financings
    (c) same as (a) but excluding conduit financings and competitively sold bonds
    (d) same as (a) but excluding conduit financings and privately placed bonds

14. Impact fees can be used by local governments for:
    (a) renewal and replacement of existing facilities only
    (b) expansion facilities only
    (c) any public purpose
    (d) none of the above

15. A "Dependent Special District" is a special district in which:
    (a) the membership of its governing body is identical to the governing body of a single county or municipality
    (b) all members of the governing body are appointed by the governing body of a single county or municipality
    (c) members of the governing body are subject to removal by the governing body of a single county or municipality
    (d) all of the above

16. Investment of local government surplus funds are:
    (a) limited by statute to United States Treasury obligations
    (b) limited to certain investments unless the local government has a formal written investment policy
    (c) limited by statute, but only with respect to special districts and non-charter counties
    (d) none of the above

REVIEW ESSAY QUESTIONS

1. Sunny Isles Developer approaches City Commissioner about the City paving the roads in his as yet to be developed subdivision, including estate homes, luxury condos and, of course, a "signature" golf course. And, while the City is at it, the City should put in the water and sewer lines. Developer tells City that in exchange for City's agreement to pay the cost of the road and utilities construction it will consent to the annexation of the subdivision into the City limits, thereby putting this multi-million dollar subdivision on the City's tax rolls.

A City Commissioner comes to you as the City Attorney and asks what the City can do to accommodate this Developer. The Commissioner suggests issuing bonds to finance the roads and backing the bonds by a pledge of the City's ad valorem tax revenues. The water and sewer lines could be financed by bonds backed by the City's water and sewer utility revenues.

How do you advise the Commissioner?

2. Same facts as above, however, the community will be a gated community for safety and the golf course will be a private, members-only club with residents having a priority in membership and tee times.

3. Group within County has been negotiating for the relocation of a professional sports franchise to County. Group tells County it would have a better chance to obtain approval of the transfer from the parent franchise organization, if the County agreed to build a new professional sports stadium at a cost of in excess of $300,000,000. Group says the sports team will sign a lease agreement with the County which will give the team the right to the sole use of the facility on each weekend for a period of six months out of the year, however, the stadium may be made available for special events at the option and in the discretion of the team to the extent such special events do not conflict with other team activities at the stadium. A portion of the stadium, to be used for team offices, will be available solely for team use throughout the 30 year lease. County wants the professional sports franchise because of the economic boon that would result in terms of sales tax and tourist development tax revenues. Commission asks you, the County Attorney, for advice regarding the state law implications of financing the stadium through a bond issue backed by sales tax and/or tourist development tax.

4. City Finance Director wants to acquire and install a new financial management computer system, including new hardware and software. He brings to you, the City Attorney, a package of preprinted forms which he says need to be executed and returned to the Vendor Computers R Us by the end of business the next day. Upon your review of the forms, you note the following:

(a) Documents purport to be installment sales documents, pursuant to which the City is obligated to pay installments of the purchase price (conveniently designated as principal and interest at a rate of 10%) over a period of five years. Vendor retains a purchase money security interest in the computer equipment with a right to repossess the equipment if City ever fails to make an installment payment.

(b) In addition to the security interest, the documents pledge all revenues of the City to secure its obligations under the pre-printed sales agreement.

How do you advise the Finance Director?

5. Same facts as above, except documents purport to be lease purchase documents with renewable annual lease terms coinciding with City's fiscal year, with lease payments subject to annual appropriation. In the event of non-appropriation, the lease terminates and City must redeliver equipment to Vendor. Lease contains a provision which prohibits City from substituting different equipment for a period of one year following a termination of the Lease for non-appropriation.

How do you advise the Finance Director?

[The answer "key" for these review questions will be provided at certification course]

APPENDIX B

TOP 10 BOND CASE GROUPS

CONSTITUTIONAL POWER / HOME RULE AUTHORITY

COUNTY

1. *State v. Orange County*, 281 So. 2d 310 (Fla. 1973) - Non-charter County passed ordinance to issue revenue bonds payable from racetrack and jai alai funds. Court found that non-charter county was authorized to issue revenue bonds without referendum pursuant to new constitution and chapter 125 (intent of Legislature was to eliminate need for county to go to legislature for a special act). Dissent felt majority was wrong and distinction between non-charter and charter counties was that non-charter only got power from special acts and ability to issue revenue bonds hadn't been given through special act.

Speer v. Olson, 367 So.2d 207 (Fla. 1978) - Reiterates *State v. Orange County* (intent of Legislature in enacting amendments to Ch.125 was to enlarge powers of counties through home rule to govern themselves through home rule ordinance). County approved issuance of water and sewer revenue bonds payable from water and sewer revenues and ad valorem taxes. The Court held that since there was no statute, general or special, either specifically authorizing or restricting the non-charter County from issuing the bonds in question, the statute granting County full power to carry on county government empowered the county board to proceed under its home rule power to accomplish such purpose. The Court also stated that an act, when it recites that it is an additional and supplemental grant of power, can be used in addition to, or rejected in favor of, other sources of power.

2. State ex rel. *Volusia County v. Dickinson*, 269 So. 2d 9(Fla. 1972) - County wanted to levy excise tax on sale of cigarettes in unincorporated areas of the county. Court held that as a charter county, county had same taxing power as municipality.

McLeod v. Orange County, 645 So. 2d 411 (Fla. 1994) - Orange County (now a charter county) proposed to issue public service tax revenue bonds and impose public service tax on unincorporated areas of county. Court reiterated *Volusia v. Dickinson* and stated that charter counties have same taxing power as municipalities. Taxpayer argued that public service tax was illegal unless projects to be financed provided a real and substantial benefit to the unincorporated areas of the County. Court held there was no prohibition on county taxing public services in unincorporated areas to benefit incorporated areas (there is prohibition on taxing of property-but not purchases- within the municipality for services exclusively for the benefit of unincorporated areas).

MUNICIPALITY

3. *State v. City of Sunrise*, 354 So. 2d 1206 (Fla. 1978) - City wanted to issue "double advance refunding" bonds to refund water and sewer bonds. Court held that this was an

acceptable method of financing municipal projects and that the constitutional provision requiring refunding to result in lower net average interest cost only applied to bonds payable from ad valorem taxes (not revenue bonds). Double advance refunding bonds could be issued as long as it was pursuant to an exercise of a valid municipal purpose. Court also stated that the feasibility and advisability of the project were beyond the scope of judicial review in a validation proceeding.

GENERAL OBLIGATION AND REVENUE BONDS

GENERAL OBLIGATION

4. *County of Volusia v. State*, 417 So. 2d 968 (Fla. 1982) – County filed complaint for validation of improvement bonds for new jail, the security for which was the County's pledge of all legally available unencumbered revenues other than ad valorem taxation along with covenant to do all things necessary to continue receiving the revenues. Trial court denied validation and the Supreme Court affirmed. The court held that the pledge of all legally available revenues other than ad valorem revenues (as opposed to specific sources of revenue) combined with the promise to maintain the programs and services which generated the fees and user charges would inevitably require increased ad valorem taxation in order for the County to have sufficient funds to maintain the programs and services that generated the pledged revenues. Therefore, a referendum was required.

Strand v. Escambia County, 992 So. 2d 150 (Fla. 2008) – County sought validation of bond issuance to finance a four-lane road-widening project inside a dependent special district. The bonds were secured by a pledge of tax increment revenues created as a result of increased property values caused by the construction. The Florida Supreme Court issued an opinion in 2007 which had reversed a circuit court's judgment validating the proposed bonds. In its original September 6, 2007 decision, the Court concluded that the County was without authority to issue the bonds secured by tax increment revenues in the absence of having first obtained voter approval by referendum because the County would use ad valorem tax revenues to pay the bonds. In doing so, the Court had receded from its earlier decision in *State v. Miami Beach Redevelopment Agency*, the first case upholding tax increment financing in Florida by validating the issuance of TIF Bonds by the Miami Beach Redevelopment Agency without the issuance of such bonds having been approved by referendum. However, on September 18, 2008, the Florida Supreme Court released a revised opinion, withdrawing its September 2007 opinion reaffirming its long-held distinction between (1) pledges of the ad valorem taxing power and (2) use of ad valorem tax revenues.

REVENUE

Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984) – A consolidated action was brought before the Circuit Court to validate revenue bonds to finance a new stadium. The Issuer was to be the Pinellas Sports Authority (PSA) and the bonds were to be payable from tourist development taxes collected by Pinellas County (the "County") and a portion of the City of St. Petersburg's (the "City") excise taxes pursuant to an Interlocal agreement entered into between PSA, the City and the County. A general law allowed Florida counties to levy a tourist

development tax to "be pledged to secure and liquidate revenue bonds issued by the county for the purposes" of building stadiums. A subsequent special act chartered PSA and empowered the County to pledge non-ad valorem moneys (including revenues from the tourist development tax) to the payment of revenue bonds issued by the PSA. The County thereafter passed ordinances imposing the tourist development tax and, under the interlocal agreement, proceeds of the tax were committed to pay a portion of the debt service on bonds issued by the PSA. Certain taxpayers sought declaratory and injunctive relief, but the trial court entered a final judgment validating issuance of the bonds. On direct appeal to the Florida Supreme Court, the taxpayers argued that under the general law the county's tourist development tax revenues could not be pledged to pay off bonds issued by a governmental entity other than the county. The Court rejected this argument, holding that when a special act (such as the PSA charter) and a general law conflict, the special act will prevail. Because the PSA charter was enacted by subsequent special act, the authority for the pledging of tourist development tax revenues by the county to secure obligations issued by the PSA controlled over any limitation imposed upon such a pledge by the general law. The Court also held that no referendum was required because the interlocal agreement required only the collection of sufficient revenue from the alternative sources allowed by statute and the bondholders had no right to compel ad valorem taxation or legislation of funds not pledged for the payment of debt service.

PUBLIC PURPOSE / PARAMOUNT PUBLIC PURPOSE

5. *Poe v. Hillsborough County*, 695 So. 2d 672 (Fla. 1997) - City of Tampa, Hillsborough County and Tampa Sports Authority (TSA) wanted to build new stadium for the Bucs. TSA was going to issue bonds payable from state sales tax to pay for stadium and taxpayer sued. Circuit court refused to validate but found that project would meet paramount public purpose test but for one clause in the stadium lease that granted the Bucs the first $2 million in revenue from non-Buc events. The Supreme Court held that the purpose of the facility was both to increase trade by attracting tourists and to provide recreation for the citizens of the District and that it would serve a valid public purpose and the private benefit and gain would be incidental. Taxpayer also contended that the credit of the District was being loaned to a private entity which violated Art IX, Sec.10 of the Constitution. Court held that once public purpose is established, constitution is not violated even though some private parties may be incidentally benefited.

State v. City of Orlando, 576 So. 2d 1315 (Fla. 1991) - The City adopted resolutions providing for the issuance of revenue bonds to finance qualifying projects of local agencies either through the execution of Local Agency Loan Agreements (LALA) or through purchase of local agency securities. The bonds would be repayable only through funds derived from repayment of the loans by the local agencies and the City itself could borrow money pursuant to a LALA. Profits earned on the loans would be placed in general revenue to be later used as determined by city commissioners. The fact that there was no identification of specific projects, which agency would receive the loans or which revenues would be pledged for repayment in addition to the fact that the City Council got to decide how to spend the profits at a later date deprived the court of the ability to determine if the funds would be used for paramount public purpose. Additionally, court determined that borrowing money for reinvestment was not a valid municipal purpose.

Orange County Industrial Development Authority v. State, 427 So. 2d 174 (Fla. 1983) - IDA proposed to issue bonds to expand TV station. Court found this was not one of listed projects allowed pursuant to Chapter 159 and primary benefit was to private party not public, therefore did not meet paramount public purpose.

State v. Osceola County, 752 So. 2d 530 (Fla. 2000) - County wanted to issue tourist development tax revenue bonds to pay for new convention center. Center would be owned by county but operated by a private entity who would also construct the facility. Court held this to be authorized even though section 125.0104(3)(l) specified the tax could be levied to pay debt service on bonds issued for the "construction" of facility, not acquisition, because legislative history indicated greater concern with means of attracting and retaining outside sports franchise rather than distinguishing between acquisition and construction. Acquiring and constructing convention center was a valid public purpose because it would promote gainful employment, outside business interest and tourism and provide forum for educational, recreational and entertainment activities.

COMMUNITY REDEVELOPMENT AGENCY BONDS

6. *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980) - Miami Beach Redevelopment Agency (MBRA) proposed issue of bonds to completely revamp south Miami Beach. Court held MBRA was authorized by statute to issue bonds (despite fact that prerequisites occurred out of order based on statute); redevelopment bonds met a public purpose; financing plan did not require referendum; after bonds have been issued, validated and sold, statutory authority to devote governmental revenues to the retirement of the bonds becomes a contractual duty, but this fact did not require referendum because the distinction is that after the sale of the bonds, a bondholder would have no right, if the redevelopment trust find were insufficient to meet the bond obligations and the available resources of the county or city were insufficient to allow the promised contributions, to compel by judicial action the levy of ad valorem taxation. Only obligation is to appropriate a sum equal to any tax increment generated in a particular year from the ordinary, general levy of ad valorem taxes otherwise made in the city and county that year.

Panama City Beach Community Redevelopment Agency v. State, 831 So. 2d 662 (Fla. 2002) - CRA wanted to issue bonds to develop blighted area that had previously been undeveloped. Trial court denied validation holding that the area had to be "redeveloped". The Supreme Court held that the statute clearly contemplated open land and that trial court erred in not paying deference to the legislative finding of blight by the City Council, as the finding was "fairly debatable."

Bay County. v. Town of Cedar Grove, 992 So. 2d 164 (Fla. 2008) - Town's proposed tax increment bond issues to finance improvements in redevelopment areas were properly validated. No referendum approval was required, as the "bondholders would have no right, if the trust funds were insufficient to meet the bond obligations, to compel the levy of ad valorem taxation."

City of Parker v. State of Florida, 992 So. 2d 171 (Fla. 2008) - City's proposed tax increment bonds to finance various capital projects are entitled to validation even though the city

levies no ad valorem taxes and will instead receive the increment from other taxing bodies. And the redevelopment area was properly found to be blighted. Nor was referendum approval required, as the "bondholders have no right, if the trust funds were insufficient to meet the bond obligations, to compel the levy of ad valorem taxation."

FEE vs. TAX

7. *State v. City of Port Orange*, 650 So. 2d 1(Fla. 1994) - City attempted to issue transportation revenue bonds payable from transportation utility fees levied against owners of developed property only. Circuit court held that fees were a user fee and validated bonds. Supreme Court reversed and found the fees to be a tax. The Court held that funding for the maintenance and improvement of an existing municipal road system even when limited to capital projects, is revenue for exercise of a sovereign function contemplated within the definition of a tax. User fees are charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved. User fees share common traits that distinguish them from taxes: they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society and they are paid by choice in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge.

Pinellas County v. State, et. al., 776 So. 2d 262 (Fla. 2001) - County brought action to validate sewer revenue bonds to fund a reclaimed water system. Circuit Court denied based on fact that County hadn't obtained consent of municipalities in service area prior to the reclaimed water system and that availability charge was an impermissible tax. The Supreme Court reversed holding that Availability Charge was a valid user fee (provided unlimited use of reclaimed water to those who paid fee, portion of fee went to improve distribution lines to individual properties) and that based on Special Acts and County's charter, obtaining municipalities consent was not necessary (County did not rely on supplemental authority of Ch. 153 to add reclaimed water improvements therefore did not need to comply with requirements of Ch. 153).

SPECIAL ASSESSMENTS / IMPACT FEES

ASSESSMENTS

8. *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) – Circuit Court declined to validate City's proposed special assessment improvement bonds because it said City did not have the authority to impose special assessments to fund the bonds; it was a tax and violated Ch. 170 which set forth specific conditions under which cities could impose a special assessment. Supreme Court reversed holding that a legally imposed special assessment is not a tax; taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property and they may be levied throughout the particular tax unit for general benefit of residents and property. Special assessments must confer specific benefit upon land burdened by the assessment and it must be fairly and reasonably apportioned among the properties that receive the special benefit. Additionally, the Court held that Ch. 170 did not preempt authority of municipalities to impose special assessments under

other circumstances and it was not the only method by which municipalities may impose a special assessment.

City of Winter Springs v. State, 776 So. 2d 255 (Fla. 2001) – City brought action to validate special assessment bonds for improvements to a planned unit development. Circuit Court refused to validate, holding that the special assessment was not in compliance with the law. The Supreme Court reversed and remanded. The Supreme Court reiterated the test for valid special assessments set forth in City of Boca Raton and held that, based on the various legislative findings of the City, if reasonable persons may differ as to whether the land assessed was benefited by the local improvement, the findings of the city officials must be sustained. The City's legislative findings were not arbitrary and therefore were entitled to a presumption of correctness; in substituting its own judgment for that of the locally elected officials, the trial court erred as a matter of law.

IMPACT FEES

9. *Hollywood Inc v. Broward County*, 431 So. 2d 606 (Fla. 5th DCA 1983) - Circuit Court concluded that a county ordinance requiring developer/subdivider, as a condition to plat approval, to dedicate land or pay a fee to be used in expanding the county level park system sufficiently to accommodate the new residents was within the County Charter and was permissible. District Court upheld the Circuit Court's decision and held that for impact fees to be valid, local government must demonstrate reasonable connection, or rational nexus, between need for additional capital facilities and growth in population generated by the subdivision. In addition, they must show reasonable connection, or rational nexus, between expenditures of funds collected and benefits accruing to subdivision.

Collier County v. State, 733 So. 2d 1012 (Fla. 1999) – County filed complaint to validate revenue certificates payable from "interim governmental services fee." Trial court held that fee was an unauthorized tax and denied validation, Supreme Court upheld. The purpose of the fee was to recoup the equivalent of a partial year assessment of ad valorem taxes on improvements to property completed after January 1 that would not otherwise be subject to taxation at the increased value for up to 27 months. County argued the fee was a special assessment because of the increased cost of providing "growth-sensitive" services as a result of the improvements. Alternatively, the County argued that if the fee was found not to be a valid special assessment, it would collect it as a fee upon the issuance of the certificate of occupancy. However, since the "growth-sensitive" services identified by the County were the same services that the County provided to all its residents for their general benefit (police, libraries, courts, etc.), there was no special benefit and therefore the fee was not a valid special assessment but an unauthorized tax. Similarly, the fee was not a valid impact or user fee because there was no direct benefit to the property and those paying the fee were not benefited by the services in a manner not shared by those not paying fee.

CERTIFICATES OF PARTICIPATION

10. *State v. Brevard County,* 539 So. 2d 461 (Fla. 1989) – Circuit Court validated County's certificates of indebtedness under a lease-purchase arrangement. Supreme Court affirmed

holding that County's lease-purchase arrangement for equipment, under which county established not-for-profit corporation to purchase equipment for lease back to county, did not violate state constitutional provision prohibiting counties from issuing, without voter approval, certificates of indebtedness payable from ad valorem taxation and maturing more than 12 months after issuance. Because the County's obligation was secured solely by non-ad valorem revenues and because County preserved the right to terminate lease without further obligation, it was not inevitable that arrangement would lead to higher ad valorem taxes.

State v. School Board of Sarasota County, 561 So. 2d 549 (Fla. 1990) – School Boards and not-for-profit entity brought actions against the State to validate ground lease of school land to not-for-profit entities, the School Board's leaseback of facilities to be constructed, and the trust agreement conveying entities' lease rights to trustees that were to market bonds and disburse funds to finance construction. The Florida Supreme Court held that the certificates of participation were not payable from ad valorem taxation and did not need to be approved by referendum as the obligations were not supported by a pledged of ad valorem taxation.

Miccosukee Tribe of Indians of Florida v. South Florida Water Management District, 48 So. 3d 811 (Fla. 2010) – Water Management District sought validation of proposed issuance of certificates of participation in order to purchase land upon which to build Everglades restoration projects. The Florida Supreme Court held that the purchase of property served the public purpose of furthering Everglades' restoration and management of water resources. As such, the Water Management District did not violate the state constitutional provision prohibiting using the state's taxing power or credit to aid a private entity or person. The Court also held that the Florida Constitution's bond referendum requirement did not apply to the issuance of certificates of participation where the Water Management District did not pledge its ad valorem taxing powers to pay the sum under the lease agreement.

APPENDIX C

ESSAY SUGGESTIONS

1. These facts bring into question the public purpose doctrine under Florida law. There are several ways to approach this response. First and foremost, it appears the development is currently outside the city limits. You should discuss whether, prior to the annexation, the City would have the ability to undertake the project at all. Additionally, assuming the annexation occurs, the issuance of bonds backed by ad valorem tax revenues would require approval at referendum. Issuance of water and sewer revenue bonds would not require referendum. Other suggestions would include the use of special assessments for both the roads and utility lines.

2. These additional facts highlight the public purpose concerns for this project. The fact that the community will be gated community is not necessarily problematic, however, any assistance in financing of the golf course portion by the City could violate the public purpose doctrine. Given these facts, special assessments would be the better approach. Also, if any city funds will be expended to finance or maintain the roads then the roads must be public. Beware of security gates on public roads. The Florida Attorney General has opined (AGO 90-51) that a city does not have the authority to install a security gate on a public road which limits access to residents and non-residents who have purchased a remote control unit to operate the security gate. There may also be local ordinances that deal with restricted access to public roads.

3. These facts again highlight the public purpose issues. Address each use separately and weigh the public benefits. Remember that the legislative determination of public purpose carries great weight. Address the legal availability of the suggested revenue sources for construction of sports stadium.

4. Purchase by installment sale does not work for local governments. Focus on the inability of local government to grant security interest in any property without referendum. Could mention interest rate limitation on local government debt (10% probably exceeds the limit and doubtful installment sale arrangement is rated in one of the highest rating categories). With respect to revenue pledge, recall that pledging of all revenues of the City for an obligation which matures in more than one year, is probably violative of the constitutional referendum requirement.

5. Purchase by lease is very common for Florida local governments. The facts stated describe a typical lease transaction. However, beware of the non-substitution clause. A Florida court struck down a non-substitution clause as against public policy. On this type of question, you could discuss why this is a permissible transaction (i.e. that the lease payments are subject to annual appropriation, the lease term is for one year, renewable annually, such that it does not constitute an obligation payable in more than twelve months).

CONFLICTS OF INTEREST/FINANCIAL DISCLOSURE

By

C. Christopher Anderson, III
Commission on Ethics, Tallahassee