

## Options for Municipalities to Finance Flood Related Expenses

Hurricane Irene, and now Tropical Storm Lee, have devastated many New York municipalities, washing out roads and bridges, damaging municipal buildings and creating extraordinary costs to remove flood related debris. In the first instance, the burden of paying for these costs falls to the local municipality. Eventually, financial assistance from the Federal Emergency Management Agency (“FEMA”) and the State of New York may be available to pay for some or all of these costs. Pending receipt of money from FEMA or the State, municipalities must nonetheless raise necessary funds to repair and replace lost and damaged facilities and to pay costs of removing flood related debris.

Municipalities may finance costs of reconstructing or replacing damaged municipal facilities through the issuance of bond anticipation notes and/or serial bonds as allowed by the Local Finance Law. Municipalities may, however, only borrow for certain discrete types of capital facilities, and only for specific time periods, as permitted by Section 11.00 of the Local Finance Law. Before adopting any bond resolution for capital projects necessitated by the flooding, the finance board of a municipality must first consider what steps must be taken in order to comply with the State Environmental Quality Review Act. A municipal finance board adopting a bond resolution for a capital project must also take care to have the bond resolution comply with the requirements of the Local Finance Law, including approval by not less than 2/3 of the voting strength of the finance board and any possible referendum requirement, among others. Consideration should be given as to whether the municipality would be better served by adopting multiple bond resolutions or a consolidated bond resolution to cover various capital projects. Flexibility to pay for unforeseen expenses associated with multiple capital projects is an important consideration. Following adoption of a bond resolution, most bond counsel will insist that the municipality publish a so-called “estoppel notice” providing summary details of the bond resolution passed by the finance board.

Temporary financing for related flood expenses, including extraordinary working capital expenses, may be accomplished through the issuance of budget notes by a municipality. Budget notes are typically issued for unforeseen expenses for which insufficient or no provision is made in a municipality’s annual budget for the fiscal year. Use of budget notes can be considered by rating agencies and others to be a “red flag” indicative of fiscal management problems of a municipality in ordinary circumstances. However, this is not the case for emergency expenses such as those caused by Hurricane Irene and Tropical Storm Lee.

The amount of budget notes that may be issued for expenses associated with unforeseeable public emergencies such as floods is not limited. Budget notes, including renewals, must mature not later than the close of the fiscal year next succeeding the fiscal year in which the notes are issued. But, if the notes are issued subsequent to the adoption of the budget for the next fiscal year, the notes must mature not later than the close of the second fiscal year succeeding the fiscal year in which issued. For budget notes issued in 2011, this would require repayment in 2012 or 2013 depending on their date of issuance.

Expanded long-term options for municipalities to finance flood relief expenses may be covered by special State legislation. In 2001 and in 2006, the State Legislature enacted special legislation to provide mechanisms for municipalities to borrow on a long-term basis for the financing of flood relief expenses. Given the widespread impacts of Hurricane Irene and Tropical Storm Lee across the State and the magnitude of the losses incurred, State legislative action is likely. This may provide a mechanism to allow municipalities to refinance budget notes that are issued to provide temporary financing. It is important for municipalities to speak with State representatives about the establishment of long-term financing options for municipalities in order to fund the extraordinary expenses required to clean up public facilities and rebuild and replace lost or damaged capital facilities.

Municipalities should consult with bond counsel before taking any actions to authorize financings of capital projects or working capital expenses relating to expenditures associated with flooding caused by Hurricane Irene and Tropical Storm Lee. Bond, Schoeneck & King, PLLC has 9 offices across New York State that are available to work with municipalities immediately to confront the financial challenges resulting from the flooding.

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