

Quick Takes

JUNE 2010

Quick Takes: General Assembly Erodes the Conflicts Safe Harbor

On the last day of this year's Session, the Georgia General Assembly passed legislation that erodes the safe harbor used by development authorities for addressing conflicts of interest on the part of their members. The new legislation may deter many citizens from agreeing to serve, or continuing to serve, on the boards of these authorities. It also poses delays in closing bond issues.

The new legislation, SB 456, was signed by the Governor on June 3, 2010, and is effective on and after July 1, 2010.

SB 456 adds this language to the requirements for using the conflicts safe harbor:

(2) that any interest or involvement by such director with a value in excess of \$200.00 per calendar quarter is published by the authority one time in the legal organ in which notices of sheriffs' sales are published in each county affected by such interest, at least 30 days in advance of consummating such transaction. . .

As background, Georgia's Code of Ethics (O.C.G.A. Sec. 45-10-3) is made specifically applicable to statutory development authorities by O.C.G.A. Sec. 36-62-5(e). That Code Section sets forth a statutory mechanism that, if utilized, satisfies the requirements of O.C.G.A. Sec. 45-10-3(9) as regards transactions between statutory development authorities and their members. O.C.G.A. Sec. 36-62A-1 contains essentially identical language and provides the same mechanism for (virtually all) constitutionally created development authorities and statutory downtown development authorities, and their members. Before SB 456 these laws read, in part:

The provisions of paragraph (9) of Code Section 45-10-3 . . . shall be deemed to have been complied with and the authority may purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any director or any organization or person with which any director of the authority is in any way interested or involved, provided (1) that any interest or involvement by such director is disclosed in advance to the directors of the authority and is recorded in the minutes of the authority, (2) that no director having a substantial interest or involvement may be present at that portion of an authority meeting during which discussion of any matter is conducted involving any such organization or person, and (3)

that no director having a substantial interest or involvement may participate in any decision of the authority relating to any matter involving such organization or person.

SB 456 inserts the new number (2) requirement (quoted above) in the safe harbor, effectively “bumping” down the previous (2) and (3) requirements and keeping the remainder of the safe harbor.

SB 456 started as a good change to the law. This change, retained in the final version, generally allows public officers of a city or county also to serve on its urban redevelopment agency. The sponsors of SB 456 were Senators Jeff Mullis, Chip Rogers, and Jack Murphy.

The change in the conflicts safe harbor was added through agreement by the Senate to a House amendment. The House amendment seems to be the reincarnation of HB 1304, which did not pass the House. The sponsors of HB 1304 were Representatives Mark Hatfield, Jill Chambers, Bobby Reese, Terry Barnard, Austin Scott, and Rich Golick.

Some of the issues presented by this change in the conflicts safe harbor include: (1) questions regarding the level of detail required in the newspaper ad; (2) potential delays caused by the 30 day waiting period, and possible additional delays due to the newspaper’s publishing schedule, before a pending transaction can close; (3) complexity if more than one county is affected; e.g., in the case of a joint development authority; and (4) the low dollar threshold (\$200 per calendar quarter) specified in SB 456 for invocation of the publication requirement. And the overarching concern is that this new requirement will deter good potential board members from accepting appointment to the boards of development authorities, and current board members from continuing to serve in office. A particular dilemma is posed for someone who is a director of a Constitutional development authority because of another office such person holds, which is a membership provision applicable to many Constitutional development authorities.

If you would like to have more information regarding the implications of SB 456, please let me know.

The “Current Bond Rates” page at danmcræ.info is updated weekly. This week’s version is what you see below.

Daniel M. McRae, Partner
Seyfarth Shaw LLP
25th Floor
1075 Peachtree St., N.E.
Atlanta, GA 30309
404.888.1883
404.892.7056 fax
dmcræ@seyfarth.com
dan@danmcræ.info

General note: This issue of *Quick Takes* is a quick-reference guide for economic developers, community

developers, participants in the real estate and financial industries, company executives and managers, and their advisors. The information in this issue is general in nature. Various points that could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

CURRENT BOND RATES	
EFFECTIVE JUNE 24, 2010	
Interest Rates:	
tax-exempt-	floating: 0.42% fixed: 2.87%
taxable-	floating: 0.55% - 0.75% <small>(eff. 06/17/10)</small> fixed: 3.38% <small>(eff. 06/17/10)</small>
General notes: 1. Rates are posted weekly. These rates are for the effective date indicated above, or as otherwise indicated. For intra-week rates, <u>Contact Dan.</u> 2. These are interest rates on revenue bonds that are variable rate demand bonds; i.e., floating. These can be synthetically fixed via interest rate swaps, as noted below. 3. Tax-exempt rates are for industrial development revenue bonds (IDB's") that are subject to the AMT and are 7 day general market quotes. 4. Taxable rates are for taxable IDB's or for taxable "corporate bonds". 5. Fixed rates are for 10 year terms via swaps. 6. All rates are market extracted and approximations, and are not guaranteed. 7. These rates do not reflect all-in costs; e.g., annual letter of credit fees are not included.	

If you would like to stop receiving Dan McRae's QuickTakes Newsletter, send an email to unsubscribe@danmcrac.info