

Operational Services

Incurring Debt 1

The Superintendent shall provide early notice to the School Board of the District's need to borrow money. The Superintendent or designee² shall prepare all documents and notices necessary for the Board, at its discretion, to: (1) issue State Aid Anticipation Certificates,³ tax anticipation warrants,⁴ working cash fund bonds,⁵ bonds,⁶ notes,⁷ and other evidence of indebtedness,⁸ or (2) establish a line of credit with a bank or other financial institution.⁹ The Superintendent shall notify the State Board of Education before the District issues any form of long-term or short-term debt that will result in outstanding debt that exceeds 75% of the debt limit specified in State law.¹⁰

Bond Issue Obligations 11

In connection with the Board's issuance of bonds, the Superintendent shall be responsible for ensuring the District's compliance with federal securities laws, including the anti-fraud provisions of

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1 State law controls this policy's content. School districts are subject to a statutory debt limitation (105 ILCS 5/19-1(a)); other provisions in 5/19-1 contain exceptions. Not all forms of indebtedness are subject to the statutory debt limitations. Before incurring any debt, the board must be certain that the debt will be within the district's debt limitation.

2 Boards that employ business managers may want to substitute "Business Manager", "Chief School Business Official", or another locally-equivalent title for "Superintendent or designee" and "Superintendent" as they appear throughout this policy; the business manager most commonly performs the duties described in this policy.

3 50 ILCS 420/1 *et seq.* and 105 ILCS 5/18-18.

4 105 ILCS 5/17-16.

5 105 ILCS 5/20-2, 5/20-4, and 5/20-5, amended by P.A. 101-416; 30 ILCS 305/2.

6 105 ILCS 5/19-1 *et seq.*; 30 ILCS 350/.

7 50 ILCS 420/0.01 *et seq.* A district may borrow money and issue bonds for the purposes stated in 105 ILCS 5/19-3, provided the board properly adopted an election referendum and subsequently the voters approved the proposition. 10 ILCS 5/28-2. Districts have the authority to issue bonds for certain purposes without a direct referendum, e.g., School Fire Prevention and Safety Bonds, Working Cash Fund Bonds, Funding Bonds, and Insurance Reserve Bonds. However, as is the case with Working Cash Fund Bonds, certain types of bonds still require boards to follow *backdoor referendum* procedures.

8 Other types of indebtedness include funding bonds and refunding bonds (105 ILCS 5/19-1 *et seq.*), as well as debt certificates and alternate bonds authorized by the Local Government Debt Reform Act (30 ILCS 350/).

9 105 ILCS 5/17-17.

10 105 ILCS 5/19-1.

11 Optional. This subhead is offered for boards that want to: (1) expressly address their obligations to comply with federal securities laws; and (2) authorize the creation of written procedures to protect the status of tax-exempt (or otherwise tax-advantaged) bonds issued by the board. As a matter of best practice and to reduce potential future liabilities, many attorneys recommend that board policy address these obligations. Consult the board attorney and/or bond counsel for guidance.

The Internal Revenue Service strongly encourages, but does not currently require, issuers of tax-exempt bonds to establish written post-issuance compliance monitoring procedures. For guidance regarding the recommended content of such procedures, see *IRS Publication 4079, Tax-Exempt Governmental Bonds*, at: www.irs.gov/pub/irs-pdf/p4079.pdf. Such procedures may be included in a written bond resolution for a specific bond issue, and/or they may be established more generally. Consult the board attorney and/or bond counsel regarding the establishment of such procedures for tax-exempt bonds.

If a board does not accept this subhead, delete the Administrative Procedure Reference and the following Legal References: Securities Act of 1933, 15 U.S.C. §77a *et seq.*; Securities Exchange Act of 1934, 15 U.S.C. §78a *et seq.*; and 17 C.F.R. §240.15c2-12.

the Securities Act of 1933, as amended¹² and, if applicable, the continuing disclosure obligations under Rule 15c2-12 of the Securities Exchange Act of 1934, as amended. ¹³

Additionally, in connection with the Board's issuance of bonds, the interest on which is excludable from *gross income* for federal income tax purposes, or which enable the District or bond holder to receive other federal tax benefits, the Board authorizes the Superintendent to establish written procedures for post-issuance compliance monitoring for such bonds to protect their tax-exempt (or tax-advantaged) status.

The Board may contract with outside professionals, such as bond counsel and/or a qualified financial consulting firm, to assist it in meeting the requirements of this subsection. ¹⁴

LEGAL REF.: Securities Act of 1933, 15 U.S.C. §77a et seq.
 Securities Exchange Act of 1934, 15 U.S.C. §78a et seq.
 17 C.F.R. §240.15c2-12.
 Bond Authorization Act, 30 ILCS 305/2.
 Bond Issue Notification Act, 30 ILCS 352/.
 Local Government Debt Reform Act, 30 ILCS 350/.
 Tax Anticipation Note Act, 50 ILCS 420/.
 105 ILCS 5/17-16, 5/17-17, 5/18-18, and 5/19-1 et seq.

CROSS REF.: 4:10 (Fiscal and Business Management)

ADMIN. PROC.: 4:40-AP (Preparing and Updating Disclosures)

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¹² 15 U.S.C. §77q.

¹³ 17 C.F.R. §240.15c2-12. See 4:40-AP, *Preparing and Updating Disclosures*, for a detailed set of sample procedures designed to facilitate a district's compliance with disclosure requirements of federal securities laws.

¹⁴ Delete the last paragraph of this subhead if the board does not want to include a sentence in this policy that addresses the use of outside professionals for assistance with compliance. Boards that regularly utilize outside professionals to assist them in meeting bond disclosure requirements may want to include this language to memorialize their current practice. Contracts for the services of individuals possessing a high degree of professional skill, such as attorneys and financial consultants, are exempt from competitive bidding requirements. 105 ILCS 5/10-20.21(a)(i).