



## 2010 Legislative Developments Affecting Bond Issuance

By Buddy Downs and Karen Arland, *Ice Miller, LLP*

The 2010 General Assembly adjourned sine die early Saturday morning, March 13th. Among the legislative items enacted by legislators during the 2010 "short" session were several amendments to the procedures for the issuance of bonds by various local government entities, including counties.

### CONTROLLED PROJECTS

"Controlled Projects" are capital projects for which the county will either issue bonds or enter into a lease and which the county will levy property taxes to pay the debt service on the bonds or the lease rentals due under a lease, and which have cost that is at least equal to the lesser of two million dollars (\$2,000,000) or one percent (1%) of the county's gross assessed value (but never less than one million dollars (\$1,000,000)). For most counties, a controlled project will cost at least two million dollars (\$2,000,000).

Currently, if the county wants to levy property taxes for a controlled project that will cost less than the lesser of twelve million dollars (\$12,000,000) or one percent (1%) of the county's gross assessed value (but never less than one million dollars (\$1,000,000)), the project may be subject to a petition and remonstrance process. Controlled projects that will cost more than the lesser of twelve million dollars (\$12,000,000) or one percent (1%) of the county's gross assessed value (but never less than one million dollars (\$1,000,000)) are eligible for a referendum process. For most counties, a project is eligible for a referendum if it costs more than twelve million dollars (\$12,000,000).

Other than the cost of the controlled project, the biggest difference between the petition and remonstrance process and the referendum process is whether the property taxes that are levied to pay the debt service or lease rentals are "outside the circuit breaker caps."

Property taxes levied for a project that has been approved at a referendum do not count against a county's overall property tax cap. Those property taxes are in addition to the property taxes that are subject to the property tax caps.

The problem for many counties is that the cost of the new jail or courthouse renovation is less than the amount that would trigger the referendum. The county may face a difficult choice – does it fund the courthouse renovation (and lay off sheriff's deputies) or does it delay renovation, because the county is already at its circuit breaker cap and cannot raise sufficient property taxes to fund both purposes.

In response to this, legislation was enacted this session that allows the county to have any of its controlled projects to be considered at a referendum. This will obviously permit counties to seek the funds necessary to undertake important capital project, but it will also afford property tax payers and voters the opportunity to determine whether additional property taxes are indeed required.

### DLGF APPROVAL OF QUESTION PRESENTED AT CONTROLLED PROJECT REFERENDUM

The General Assembly has given the Department of Local Government Finance ("DLGF") a greater role in the preparation of the question concerning the controlled project that is submitted to the voters at a referendum. Effective immediately, once the county election board has approved the question concerning a controlled project that will be submitted to the voters at an upcoming referendum, the election board is required to submit the question to the DLGF, which will review the question and make any recommendations to the county election board with regard to the question no later than ten (10) days after receiving the question. The

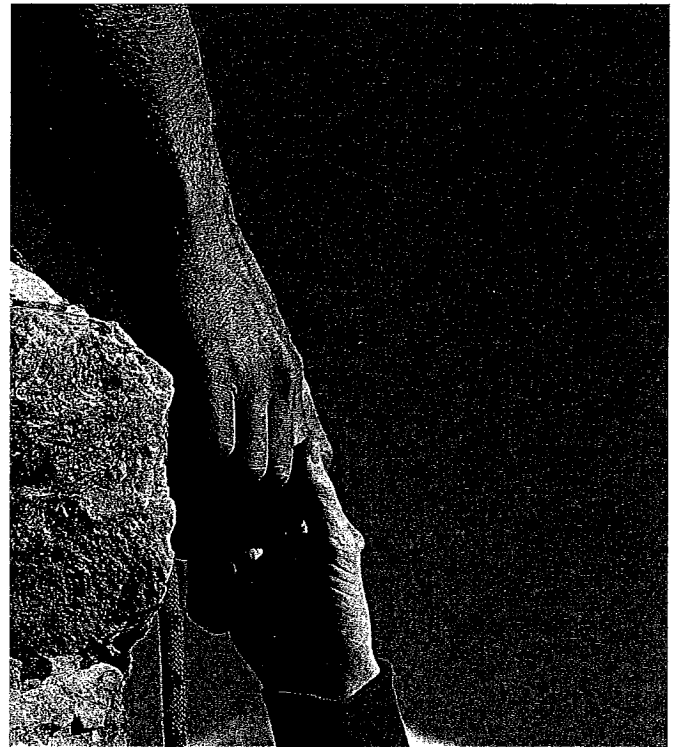
county election board will then finalize the question, which may or may not include the recommendations of the DLGF, and the county auditor will certify the question to the election board of each county in which the referendum will be held.

#### ADDITIONAL NOTICES FOR CONTROLLED PROJECTS

Under current law, the county must publish several notices as part of the process for financing a controlled project. The notices include: (i) a notice of a hearing on a determination to finance a controlled project; (ii) a notice that a determination has been made; and (iii) a notice that the controlled project will be the subject of either a petition and remonstrance process or a referendum. Beginning July 1, 2010, copies of those notices must also be sent by first class mail to the circuit court clerk.

County officials should discuss these provisions with local counsel and with bond counsel prior to undertaking any capital project. •

*Ice Miller LLP* serves as general counsel to the Association. If you have further questions on these legislative changes or on the procedures for financing projects, please call Buddy Downs at (317) 236-2339.



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