

CHAPTER IX

BONDS, BORROWING, AND DEBT ADMINISTRATION

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INTRODUCTION

Issuing bonds is often the best way, and sometimes the only way, a municipality can raise sufficient funds to undertake large capital projects. This chapter presents an overview of the different types of bonds, the different purposes for which bonds can be issued, and the processes of issuing, underwriting, marketing, and servicing bonds.

Although the elected and appointed officials of most municipalities are usually not financial experts and participate only occasionally in the debt market, local officials need to understand the basics of the bond process so that they can make informed decisions and explain their municipality's special needs to the citizenry. Mistakes in the issuing of bonds can be costly, both fiscally and politically.

NATURE AND PURPOSES OF MUNICIPAL BONDS

A municipal bond is a written promise of a municipality to pay a specified sum of money (the face value or principal amount) at a specified date or dates in the future (the maturity date or dates) together with periodic interest at a specified rate (compensation paid for use of the money).

State law authorizes a municipality to issue bonds to construct, improve, erect, repair, adorn, equip, establish, protect, pave, purchase, acquire, operate, maintain, replace, enlarge, expand, improve, build, remodel, add to, furnish, prepare, etc., whichever is specified in a particular section of the law, over seventy types of public facilities, public works, or items of public machinery and equipment. Some of these are as follows:

1. Airports for colleges or universities [§ 21-33-301(n)]¹
2. Airports and air navigation facilities [§ 61-3-1 *et seq.* and § 61-5-1 *et seq.*]
3. Armories [§ 21-33-301(a)]
4. Art centers [§ 21-33-301(a)]
5. Athletic buildings and land [§ 21-33-301(a)]

¹All such references throughout this chapter are to sections of the *Mississippi Code of 1972*, as amended.

6. Athletic fields [§ 21-33-301(a)]
7. Athletic stadiums [§ 21-33-301 (a)]
8. Auditoriums [§ 21-33-301(a) and § 31-8-3 (lease financing)]
9. Books for public libraries [§ 21-33-301(c)]
10. Bridges [§ 21-33-301(h)]
11. Cemeteries, including land therefor, equipment, and adornments [§ 21-33-301(g)]
12. Channelization of streams and water courses to control, deflect, or guide the current thereof [§ 21-33-301(k)]
13. Civic art centers [§ 31-8-3 (lease financing)]
14. Community centers [§ 21-33-301(a) and § 31-8-3 (lease financing)]
15. Convention centers [§ 17-3-15]
16. Culverts [§ 21-33-301(h)]
17. Docks, including land and improvements therefor [§ 21-33-301(I)]
18. Drainage systems [§ 21-33-301(d)]
19. Driveways and land therefor [§ 21-33-301(f)]
20. Economic development [§ 21-33-30(q)]
21. Election equipment [§ 21-33-301(m)]
22. Electric plants, distribution systems, or franchises [§ 21-33-301(b) and § 21-27-23]
23. Equipment with a useful life in excess of ten (10) years [§ 21-33-301(p)]
24. Fire-fighting equipment and apparatus, including housing and land therefor [§ 21-33-301(1)]
25. Game and fish management projects [§ 49-5-17 and § 55-9-1]
26. Garbage disposal systems [§ 21-27-23]
27. Gas plants, distribution systems, or franchises [§ 21-33-301(b) and § 21-27-23]

28. Gymnasiums [§ 21-33-301(a) and § 31-8-3 (lease financing)]
29. Harbors and appurtenant facilities, including land and improvements therefor [§ 21-33-301(I) and § 59-3-1]
30. Hospitals (public) and health facilities, including land and improvements therefor [§ 21-33-301(j), § 41-13-19, and § 41-73-1 *et seq.*]
31. Houses of correction (public), including land and improvements therefor [§ 21-33-301(j)]
32. Housing [§ 43-33-1 *et seq.*]
33. Jails (public), including land and improvements therefor [§ 21-33-301(j), § 17-5-1 (in cooperation with counties), and § 31-8-3 (lease financing)]
34. Lakes [§ 55-9-1]
35. Library buildings, land, equipment, and books [§ 21-33-301(c) and § 31-8-3 (lease financing)]
36. Machinery with a useful life of over ten years [§ 21-33-301(p)]
37. Markets (public), including land and improvements therefor [§ 21-33-301(j)]
38. Mass transit systems (existing), subject to special election [§ 21-33-301(o)]
39. Motor vehicle transportation system [§ 21-27-23(a)]
40. Municipal buildings [§ 21-33-301(a)]
41. Parking (public) facilities and land therefor [§ 21-33-301(f)]
42. Parks, including land therefor, equipment, improvements, and adornments [§ 21-33-301(g) and § 55-9-1]
43. Parkways and land therefor [§ 21-33-301(f)]
44. Pest houses (public), including land and improvements therefor [§ 21-33-301(j)]
45. Piers, pavilions, bath houses, and other like appropriate structures [§ 21-37-13]
46. Playgrounds (public), including land therefor, equipment, and adornment [§ 21-33-301(g)]
47. Pollution control facilities [§ 49-17-103(c)]

48. Ports, harbors, docks and wharves [§ 59-3-1 *et seq.* and Chapter 7 of Title 59]
49. Protection of a municipality, its streets and sidewalks, from overflow, caving banks, and other like dangers [§ 21-33-301(e)]
50. Public buildings [§ 31-8-3 *et seq.* (lease financing)]
51. Public utility plants, distribution systems, or franchises other than those mentioned elsewhere in this listing [§ 21-33-301(b) and § 21-27-11 *et seq.*]
52. Railroad transportation system for passengers and freight [§ 21-27-23(a)]
53. Redevelopment projects [§ 21-45-9 and § 43-35-21]
54. Recreational facilities, including land and equipment therefor [§ 21-33-301(g) and § 55-9-1]
55. Retirement system funding [§ 21-29-27]
56. Reformatories (public), including land and improvements therefor [§ 21-33-301(j)]
57. Rubbish disposal system or incinerators [§ 21-27-23]
58. Sanitary systems [§ 21-33-301(d)]
59. Sewage disposal systems [§ 21-27-23]
60. Sewerage systems [§ 21-33-301(d) and § 21-27-23]
61. Sidewalks and land therefor [§ 21-33-301(f)]
62. Slaughterhouses (public), including land and improvements therefor [§ 21-33-301(j)]
63. Solid waste facilities [§ 17-7-101 *et seq.* and § 17-17-335 (closure, post closure maintenance and corrective actions)]
64. Stadiums [§ 55-9-1]
65. Storm systems [§ 21-33-301(d)]
66. Streets and land therefor [§ 21-33-301(f) and § 21-41-1 *et seq.*]
67. Swimming pools, including land and equipment [§ 21-33-301(g)]

68. Urban renew project [§ 43-35-1 *et seq.*]
69. Voting machines [§ 21-33-301(m)]
70. Walkways and land therefor [§ 21-33-301(f)]
71. Waterworks plants, distribution systems, or franchises [§ 21-33-301(b) and § 21-27-23]
72. Wharves, including land and improvements therefor [§ 21-33-301(I)]
73. Workhouses (public), including land and improvements therefor [§ 21-33-301(j)]

TYPES OF MUNICIPAL BONDS AND DEBT

Most municipal bond offerings in Mississippi are of twelve major types. Each type of issue has certain advantages or disadvantages. The type of bonds issued to finance a public improvement depends upon the custom and tradition of the municipality, how the proposed financing fits into the overall financial structure of the municipality and upon the circumstances of the particular project to be financed. Those twelve major types of bonds issued by municipalities in Mississippi are as follows:

General Obligation Bonds

General obligation bonds pledge the unlimited taxing power and the full faith and credit of the municipality to meet the required payments of principal and interest. General obligation bonds are generally limited to a maximum maturity of twenty years and can carry a maximum interest rate of eleven percent [§ 21-33-87, § 21-33-315, and § 75-17-101].

The general obligation bonded indebtedness of a municipality is limited to the greater of (a) fifteen percent of the assessed value of the taxable property within the municipality, according to the last completed assessment for taxation, or (b) ten percent of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984. In computing this limitation, there may be deducted all bonds for school, water, sewerage systems, gas, light, and power purposes and for the construction of special improvements primarily chargeable to the property benefitted, for the purpose of paying the municipality's portion of any betterment program, a portion of which is primarily chargeable to the property benefitted. The total general obligation bonded indebtedness, both bonded and floating, of a municipality shall not exceed the greater of (a) twenty percent of the assessed value of all taxable property within the municipality, according to the last completed assessment for taxation, or (b) fifteen percent of the assessment upon which taxes were levied for the municipality's fiscal year ending September 30, 1984. In calculating the general obligation bond debt limit, excluded are all contract obligations which are subject to annual appropriations therefor, and all bonds, or other evidence of indebtedness, issued for school purposes, all obligations payable exclusively from the revenues of any municipality-owned utility, bonds issued under the provisions of § 57-1-1 through § 57-1-51, and any special assessment improvement bonds issued under the provisions of § 21-41-1 through § 21-41-53.

Revenue Bonds

Revenue bonds may be issued by a municipality to build, acquire, or improve any (or any combination of) waterworks system; water supply system; sewerage system; sewage disposal system; garbage disposal system; rubbish disposal system or incinerator; gas producing, generating, transmission, or distribution system; electric generating, transmission, or distribution system; railroad transportation system for passengers and freight; or motor vehicle transportation system [§ 21-27-23]. Revenue bonds pledge the revenue from the facility to be constructed, acquired, or improved to meet the bond principal and interest payments. Revenue bonds are appropriate debt instruments when the project can be expected to generate sufficient revenue to meet operating and debt service costs. Municipalities usually pay higher interest rates on revenue bonds than on general obligation bonds because revenue bonds are generally considered to carry more risk in terms of repayment of the bonds, although the gap in interest rates has narrowed in recent years.

When issuing revenue bonds, care must be taken to insure that the proposed bond issue is allowed by the terms of the bond documents pertaining to outstanding revenue bond issues. Such bond documents may impose earnings tests for the issuance of revenue bonds on a parity of lien with the outstanding bonds, or may prohibit the issuance of any subsequent bonds altogether unless the outstanding bonds are first defeased.

Whether or not there are existing bond documents, care should be taken to craft the provisions of all bond documents. Such documents may influence the operation of an enterprise for many years, and their influence can be positive or negative. Additional borrowing can be effectively negated or carefully planned in such bond documents, and bond sales or bond ratings may be adversely affected or enhanced.

Revenue bonds are limited to a maximum maturity equal to the estimated life of the contemplated system or improvement – in no event longer than thirty years [§ 21-27-45]. Generally, public sale using sealed bids is required. Special provisions, including the authority to sell at private sale and the authority to provide for maturities of up to thirty-five years, are applicable to bond issues sold to the United States government, or any agency thereof. The maximum interest rate to maturity for revenue bonds is limited to thirteen percent per annum [§ 21-27-45 and § 75-17-103].

Special Assessment (Improvement) Bonds

Special assessment bonds are frequently used to finance improvements in a particular neighborhood or location where the property benefitted can be specifically identified or where equity indicates that the property owners should share in the payment for such improvements. Principal and interest payments, in whole or in part, for these bonds are made by a special assessment on the property benefitting from the improvement.

The following types of improvements may be constructed using special assessment bonds:

1. Streets, highways, boulevards, avenues, squares, lanes, alleys, and parks, or any part thereof, may be opened, reopened, widened, graded, paved, repaved, surfaced, and resurfaced, including the construction or reconstruction of curbs and gutters therein [§ 21-41-3(a)].
2. Sidewalks may be graded, regraded and leveled, laid, relaid, paved, repaved, surfaced, or resurfaced [§ 21-41-3(b)].
3. Water mains, water connections, sanitary disposal systems, sanitary sewers, storm covers, and other surface drains or drainage systems may be laid, relaid, constructed, or reconstructed [§ 21-41-3(c)].

State law mandates a number of specified procedures to be followed by a municipality in authorizing, assessing, and collecting assessments for special improvements [§ 21-41-1 through § 21-41-39]. The special assessments must be made in the manner required by the statute. Streets must be assessed according to the length of the abutting property as a portion of the whole assessment to be made on abutting property. If a majority of property owners owning more than fifty percent of the front footage of the property to be improved and benefitted by street improvements and who actually reside on or otherwise occupy the said property file a protest to the proposed improvement, then the improvement will not be made [§ 21-47-7]. This has generally been interpreted to mean that the owners of more than fifty percent of the front footage are a majority, no matter how many owners are involved. Other types of improvements may be assessed on an area basis.

If a municipality needs to borrow money to make special improvements which have been authorized under state law, the municipality can issue negotiable notes, certificates of indebtedness, or special street improvement bonds [§ 21-41-41]. Debt so obligated may not exceed the cost of the improvements [§ 21-41-45(1)]. Special assessment bonds are a type of general obligation bonds in that the full faith and credit and taxing authority of the municipality are pledged to repay the bonds. Special assessment bonds are limited to a maximum maturity of twenty years and can carry a maximum interest rate of eleven percent [§ 21-41-43 and § 75-17-101]. Note § 21-41-45(5), which seems to be in conflict with § 21-41-41 and § 21-41-47.

Industrial Development Revenue Bonds (IDRBs)

Municipal IDRBs. Industrial development revenue bonds are issued for purposes of industrial development related to products of agriculture, mining, or industry – i.e., the acquisition, construction, equipping, and leasing of facilities related to the manufacturing, processing, assembling, etc. of said products. Projects can be located not more than fifteen miles outside the municipality's corporate limits. Projects must be approved (granted a Certificate of Public Convenience and Necessity) by the Mississippi Development Authority. Bonds issued for such projects are subject to no maximum interest rate and are repaid solely out of the revenue received from leasing the industrial facility. The term of such bonds may not exceed thirty years [§ 57-3-1 through § 57-3-33].

It should be noted that state law authorizes municipalities to also issue “small issue” industrial development revenue notes [redemption term not to exceed ten years] for the purpose of financing projects where the loan to any one project does not exceed \$500,000 [§ 57-41-1 through § 57-41-17].

State IDRBs with Local Involvement. Industrial Development Revenue Bonds may also be issued by the Mississippi Business Finance Corporation (MBFC) [§ 57-10-201 *et seq.*]. Unlike the structure employed when the municipality acts as issuer, the title to the facilities so financed may remain with the corporate user (as opposed to being held by the issuer and leased to the corporate user). Before the MBFC will proceed to issue the bonds, it will require a resolution from the municipality approving the granting of the ad valorem tax benefits made available under the MBFC statute. In addition, bonds issued by MBFC may provide corporate users of certain types of facilities, including, but not limited to manufacturing facilities, large distribution facilities and telecommunications or data processing facilities, a credit against corporate income tax under the so-called RED Act [§ 57-10-401 *et seq.*].

Industrial Development General Obligation Bonds

The governing authority of a municipality, after receiving a Certificate of Public Convenience and Necessity from the Mississippi Development Authority and approval by the voters in a called election, may issue “full faith and credit” bonds to acquire land and erect structures for leasing to an industrial prospect. The maximum maturity for such bonds is twenty years and the maximum interest rate which the bonds can carry is eleven percent. This statute has been seldom used in recent years. An election is required [Chapter 1 of Title 57].

Economic Development Bonds with State Involvement

The State of Mississippi has a number of programs to assist or encourage economic development. Those programs included financial assistance and somewhat detailed and complex programs concerning tax incentives. For details on those programs, and advice as to economic development resources, the Mississippi Development Authority and/or bond counsel should be consulted.

Regional Economic Development Act Bonds

Bond authority for economic development bonds was authorized through the enactment of the Regional Economic Development Act [§ 57-64-1 through § 57-64-27]. This act enables local government units (counties and municipalities) of the state to cooperate and contract with other local government units and political subdivisions from another state, to form regional economic development alliances to share the costs of and revenues derived from a project, and to pledge revenue from a project to secure the payment of bonds. The types of projects for which development alliances may be formed include any of the following which promote economic development or which assist in the creation of jobs:

1. Acquisition, construction, repair, renovation, demolition, or removal of buildings and site improvements (including fixtures); potable and nonpotable water supply systems; sewage

and waste disposal systems; storm water drainage and other drainage systems; airport facilities; rail lines and rail spurs; port facilities; highways, streets, and other roadways; fire suppression and prevention systems; utility distribution systems, including, but not limited to, water, electricity, natural gas, telephone, and other information and telecommunications facilities, whether by wire, fiber or wireless means (provided that electrical, natural gas, telephone, and telecommunications systems shall be constructed, repaired or renovated only for the purpose of completing the project and connecting to existing utility systems); business, industrial, and technology parks; and the acquisition of land and acquisition or construction of improvements to land connected with any of the preceding purposes;

2. County purposes authorized by or defined in § 17-5-3 (waterworks and sewage systems for military camps) and § 19-9-1 (uniform system for issuance of bonds except for construction of school buildings);
3. Municipal purposes authorized by or defined in § 17-5-3, § 17-17-301 *et seq.* (regional solid waste authority), § 21-27-23 (municipal utility borrowing powers), and 21-33-301 (uniform system for issuance of bonds); and
4. Refunding of bonds as authorized in § 21-27-1 *et seq.*

To form an alliance the local government unit must apply to the Mississippi Development Authority for a certificate of public convenience and necessity. Certain details must be authorized by the Mississippi Development Authority and set out in such certificate.

The local government units in the alliance may issue general obligation bonds [§ 19-9-1 through § 19-9-31 and § 21-33-301 through § 21-33-329], tax increment finance bonds [§ 21-45-3 through § 21-45-21], revenue bonds [as authorized by any statute authorizing the issuance of revenue bonds], and special assessment bonds [§ 21-41-1 through § 21-41-47] for the project as authorized in the certificate of public convenience and necessity without regard to whether the activities and improvements are within or without the boundaries of the local government unit.

Every agreement made under this act must be submitted to and approved by the Attorney General in order to be effective.

One important aspect of this act should be particularly noted: If any party to the regional economic development alliance shall have authority to undertake a particular project or pursue a particular action with respect to such project, then the alliance shall have identical authority so to do.

Mississippi Development Bank Bonds

The Mississippi Development Bank is authorized to issue its bonds and to loan the proceeds thereof to a municipality in exchange for a note of such municipality. Under the right set of circumstances, this borrowing method can achieve lower interest rates. Also, the issuance of such note by the municipality to the Mississippi Development Bank can offer certain other

advantages such as treatment of such obligation under debt limit restrictions and applicable sale provisions. The advantages and disadvantages of this approach should be discussed with the municipality's financial agent and bond counsel.

Pollution Control Industrial Development Revenue Bonds

The governing authority of a municipality, subject to the concurrence of the Mississippi Air and Water Pollution Control Commission, may issue bonds to acquire, purchase, construct, enlarge, expand, improve, operate, maintain, and replace pollution control facilities. These bonds may have a maximum maturity of forty years and carry a maximum interest rate of thirteen percent. Repayment of such bonds must be made from revenue resulting from agreements with an industry to construct, operate, maintain, repair, and replace the pollution control facilities or lease/sale to an industry of the pollution control facilities [§ 49-17-101 through § 49-17-123].

Urban Renewal Bonds

A municipality has the authority to issue bonds to finance the undertaking of urban renewal projects. Such bonds have a maximum maturity of thirty years and can carry a maximum interest rate of thirteen percent. Urban renewal bonds are repayable solely from the income, revenues, and funds of the municipality derived from the carrying out of the urban renewal project, including any contributions from the federal government to the urban renewal project or a mortgage on the urban renewal project [§ 43-35-1 through § 43-35-37].

Solid/Hazardous Waste Disposal Bonds

A municipality, after obtaining a Certificate of Public Convenience and Necessity from the Mississippi Development Authority, may issue bonds to acquire, own, and lease a project for the purpose of promoting the construction and installation of projects for the collection, treatment, processing, reprocessing, generation, distribution, recycling, elimination, or disposal of solid and hazardous waste products by inducing manufacturing and industrial enterprises, qualified persons, firms, or corporations to locate and construct said projects. The issuing of such revenue bonds is subject to approval by the voters if a written protest requires the calling of an election on the question of the issuance of such bonds. This type of bond issue has a maximum maturity of thirty years and can carry a maximum interest rate of thirteen percent. Such bonds are payable solely out of the moneys to be derived by the municipality from agreements with an industry located in the municipality to construct, operate, maintain, repair, or replace a solid/hazardous waste project or a lease/sale of such a project to an industry [§ 17-17-101 through § 17-17-135].

Port Improvement Bonds

Certain municipalities are authorized to issue bonds for a number of activities related to the construction and improvement of ports and harbors [§ 59-3-1 through § 59-3-13 and § 59-7-1 through § 59-7-429].

Refunding Bonds

The governing body of a municipality may authorize the issuance of refunding bonds which can be used to refinance outstanding bonds. Sometimes substantial savings can be achieved through such a refunding. Neither an election nor notice of intent is normally required for a refunding, nor is a public sale usually required. For more complex refundings, a negotiated sale is typical, and in some cases is the only practical way to achieve a refinancing. [§ 31-27-1 *et seq.*, § 31-15-1 *et seq.*, and several more limited statutes].

Tax Increment Finance Bonds

Tax Increment Financing Bonds, also referred to as “TIF Bonds,” have recently been increasingly used. Such bonds may be used for a wide variety of undertakings, including but not limited to land acquisition, infrastructure and site improvements, street construction and improvements, and building construction and/or renovation. To initiate this type of financing, the municipality goes through a prescribed procedure for creating a tax increment development plan and a tax increment financing plan that defines a financing district or area. The base level of assessed value within that area is then established and a sufficient portion of the specified ad valorem taxes on any subsequent increase in assessed value over that base or property included in the tax increment financing plan is diverted to satisfy the principal of and interest on the TIF Bonds. Through agreement with a county, both eligible municipal and county ad valorem taxes may be so diverted. An incremental increase from an established base of sales taxes within that area may also be diverted to pay such bond. No election or protest petition procedure for an election is required, and public or private sale is authorized. Due to the nature of the Bonds, negotiated sales are most common [§ 21-45-1 through § 21-45-21].

USDA Utilities Loans

Probably the most common type of water and sewer financing in Mississippi are utility bond issues sold to the United States Department of Agriculture, Rural Utilities Service. That agency has a program of providing financing for utility services in rural areas and smaller municipalities at attractive rates over thirty-five years.

Mississippi Department of Environmental Quality Loans

Various revolving fund loan programs for water and sewer projects are available from time to time through the Mississippi Department of Environmental Quality for attractive rates.

Short Term Debt

1. *Borrowing in Anticipation of Taxes.* The governing authorities of a municipality may borrow money for the current expenses of the municipality, including bonded indebtedness, in anticipation of the ad valorem taxes to be collected for the current fiscal year in an amount not to exceed fifty percent of the anticipated, but uncollected, revenue to be produced by the then-current tax levy. The municipality is not required in such borrowing to publish notice of intent to borrow or to secure the consent of the electors of

the municipality by election or otherwise. Money so borrowed shall bear interest at a maximum rate of eleven percent and shall be repaid not later than the following March 15 out of the first moneys collected by reason of the tax levy in anticipation of which such money is borrowed [§ 21-33-325].

2. *Borrowing in Anticipation of Confirmed Federal Grants or Loans.* Unless prohibited by federal law or otherwise, a municipality that has a binding commitment from the federal or state government for a grant or loan may borrow money in anticipation of receipt of funds from such confirmed grant or loan in an amount not to exceed the amount of the confirmed grant or loan, the amount of interest payable on such interim financing, and the reasonable cost of incurring such indebtedness or issuing the note or notes evidencing such indebtedness. The municipality is not required in such borrowing to publish a notice of intent to borrow or to secure the consent of the electors of the municipality by election or otherwise. Since the primary security for repayment is the grant or loan, care should be taken that the interest costs and transaction costs do not drive the repayment amount over the amount of the loan or grant. Money so borrowed shall bear interest at a maximum interest rate of nine percent [§ 21-33-326].
3. *Borrowing for Any Purpose for which Bonds, Notes, or Certificates of Indebtedness Are Authorized by Law (Small Issue Authority).* The governing authorities of a municipality may issue general obligation notes or certificates of indebtedness to borrow for the following purposes: (1) to accomplish any purpose for which such governing authorities are otherwise authorized by law to issue bonds, notes, or certificates of indebtedness, and (2) to pay costs incurred by governing authorities as a result of a natural disaster. The total outstanding indebtedness incurred under this authority at any one time shall not exceed the greater of one percent of the assessed value of all taxable property located within the issuer according to the last completed assessment for taxation or \$250,000. Such indebtedness shall be included in computing the statutory limitation upon indebtedness. The rate of interest for this borrowing may not exceed eleven percent and this indebtedness must be repaid within five years [§ 17-21-51 through § 17-21-55].

Lease Financing

Municipalities are authorized to lease finance equipment [§ 21-17-1 and § 17-5-15] and public buildings [§ 31-8-1]. Under the lease financing agreement, periodic lease payments shall be made by the municipality, and the municipality shall have an option to purchase the leased property upon the expiration of the lease term or upon such earlier date as may be agreed upon. Lease financing revenues may come from any legally-available source. [Municipalities are still limited to the ten percent property tax growth cap, however.] Generally, with regard to leases involving public buildings, the lessor is a non-profit corporation organized under applicable state law acting on behalf of the municipality for the purpose of financing the acquisition and construction of a public building. The lessee is generally the applicable municipality. If the obligation is subject to annual appropriation, then no notice of intent or election is required and the obligations are not subject to the debt limit of the municipality. As might be expected, interest rates will be at least slightly higher than for general obligations of the issuer. Certificates of participation can be issued which give the holders thereof a proportional interest

in the lease-purchase obligation [§ 31-8-1 through § 31-8-13].

MAJOR STEPS IN THE PROCESS FOR ISSUANCE OF BONDS

Depending upon the form of government in a municipality, the type of bond issue contemplated, and the nature and complexity of the project for which bonds will be issued, a number of actors will be involved in the process of issuing bonds. These participants may include the governing authority of the municipality (the Mayor and the City Council, Board of Aldermen, etc.), the City Manager or Chief Administrative Officer, the Municipal Clerk, the Municipal Attorney, Bond Counsel, state agencies, the State's Bond Attorney, the Chancery Court, the Municipal Accountant or a Certified Public Accountant, the City Engineer or a consulting engineer, a financial advisor or fiscal consultant, a bond rating firm, financial institutions or a bond underwriter, a trustee or paying agent, and the bondholders or investors. The bulk of the work in preparing and processing the official documents connected with the bond offering usually falls to the Bond Counsel, the Municipal Attorney, the Chief Administrative Officer and/or the Municipal Clerk, and patient, good-humored staff members.

Although not to be considered an exhaustive listing, the following steps are the major steps or procedures usually involved in the process of issuing bonds (certain bond issues may involve only some of these steps):

1. The governing authority of the municipality must adopt a resolution declaring the intention of the municipality to issue bonds, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and specifying the date upon which the governing authority proposes to direct the issuance of the bonds. This resolution of intent must be published in a newspaper at certain times and "posted" under certain conditions [e.g., § 21-33-307]. If the bonds are to be tax-exempt under federal law requirements, then a notice and a hearing are required to satisfy such requirements.

Special Note for industrial development bonds:

If the bond issue is a type of industrial development bond, the following actions are necessary:

- a. The municipality adopts a resolution approving a Memorandum of Agreement between the municipality and the industry in which the municipality preliminarily agrees to issue bonds for a project which the industry agrees to develop.
- b. The municipality adopts a resolution requesting the Mississippi Development Authority to issue a Certificate of Public Convenience and Necessity authorizing the municipality to participate in the proposed project [§ 57-1-19 and § 57-1-21].
- c. The municipality adopts a resolution placing the Certificate of Public

Convenience and Necessity, if issued, upon the Minutes of the municipality.

2. While the required newspaper notice is being published, the municipality, in coordination with its bond counsel, any financial advisor, and municipal attorney, will begin preparation of the Official Statement (referred to as the Preliminary Official Statement until final sale information is known) and the capital improvements plan or engineering study and will initiate the bond rating process, if such actions and/or documents are required for the bond issue:
 - a. The Official Statement (or disclosure document) describes in detail the community, its financial resources relevant to the proposed bonds, and the proposed bond issue. Investors and underwriters base their decision to commit funds to the issue, in large part, upon the information found in the Official Statement. The Official Statement is also used by the bond rating firm, if any, in assigning a rating to the issue.
 - b. The capital improvements plan and/or the engineering study describes the community's future plans so that investors, underwriters, and the bond rating agency can assess the risk associated with any particular bond issue.
 - c. The bond rating (usually done by Moody's Investors Service or Standard and Poor's Ratings Services) is in effect a credit evaluation of the bond issue – a shorthand description of the municipality's credit worthiness with regard to the proposed bonds. In general, the higher the bond rating, the lower the interest rate for sale of the bonds by the municipality.

CREDIT RATING FOR BONDS		
<i>Rating</i>		<i>Description</i>
<i>Moody's</i>	<i>Standard & Poor's</i>	
Aaa	AAA	Best quality, exceptionally strong capacity to pay principal and interest
Aa	AA	High quality, very strong capacity to pay principal and interest
A	A	Upper medium quality, adequate capacity to pay principal and interest
Baa	BBB	Medium quality, adequate capacity to pay principal and interest for the present, but protective elements may be lacking or unreliable over any great length of time
Ba & lower	BB & lower	Speculative quality, moderate capacity to pay principal and interest
<p>Note: Moody's applies numerical modifiers 1, 2, and 3 in each generic rating classification from "Aa" to "Caa." The modifier 1 indicates that the issue ranks in the higher end of its generic rating category; the modifier 2 indicates a mid range ranking; and the modifier 3 indicates that the issue ranks in the lower end of its generic category. Standard & Poor's may modify ratings from "AA" to "CCC" by the addition of plus or minus sign to show relative standing within the major rating categories.</p>		

3. The governing authority should adopt a resolution placing the proof of publication for the declaration of intent resolution upon the minutes of the municipality.
4. The municipality's governing authority will conduct a public hearing on the proposed bond issue on the date established in the resolution of intent for the issuance of the bonds. A resolution should be adopted by the governing authority placing the minutes of the public hearing upon the minutes of the municipality.
5. If, on or before the date of issuance of the bonds, a proper written protest is filed against the issuance of the bonds, an election on the question of the bonds must be called. It should be noted that the municipality's governing authority, in its discretion, may call an election on the question of the issuance of certain types of bonds. The question of pre-clearance of the bond issue election under the terms of the Voting Rights Act of 1965, as amended, should be carefully investigated by the municipality. It is the position of the United States Department of Justice that all special elections require pre-clearance.
 - a. *General Obligation Bonds.* An election is required if ten percent of the qualified electors of the municipality, or fifteen hundred, whichever is less, file a written protest [§ 21-33-307]. A three-fifths majority of those voting must approve the bond issue for the bonds to be issued [§ 21-33-311]. A simple majority of those voting is required for general

obligation community hospital bonds [§ 41-13-19].

- b. *Revenue Bonds.* The general rule is that an election is required for such bonds. However, a very large exception is that no election is required unless there is a sufficient protest if the proposed bonds are for improving, repairing, or extending an existing system. In that case, a resolution or notice of intent is published and an election is required only if twenty percent of the qualified electors file a written protest [§ 21-27-43].
 - c. *Industrial Development Revenue Bonds.* An election is required if twenty percent of the qualified electors of the municipality file a written protest upon published notice of intent to issue such bonds. A simple majority of those voting must approve the bond issue for the bonds to be issued [§ 57-3-11 through § 57-3-17].
 - d. *Industrial Development General Obligation Bonds.* An election is required by law and a sixty percent majority of those voting must approve the bond issue for the bonds to be issued. [At least thirty percent of the qualified electors of the municipality must vote in the election] [§ 57-1-25].
6. If no election is required for the issuance of the bonds or if a required election is successful, the governing authority of the municipality will adopt a resolution authorizing the issuance of the bonds.
 7. The governing authority of the municipality will adopt and publish a Notice of Bond Sale for receipt of bids on the bonds.
 8. The Notice of Bond Sale, a copy of the Official Statement, a designation of the bond rating (if applicable), information concerning bond insurance (if applicable), and bid forms will be disseminated by the municipality to prospective investors (financial institutions, underwriters, etc.).
 9. At the specified time, the municipality will receive bids for the sale of the bonds; and, if a bid is accepted, the governing authority will adopt a resolution awarding the sale of the bonds.
 10. The municipality's bond counsel will arrange for the printing of the bonds and will review the bond proofs and the specimen bonds.
 11. The municipal attorney and the municipal clerk and/or the municipal administrator will prepare the bond transcript – all legal documents, including appropriate minutes of the governing authority, associated with the bond issue. This may be done just prior to or subsequent to the bond sale. In the former case, a supplemental transcript will be prepared to include the sale.

12. The municipality's bond counsel or the municipal attorney will secure approval of the issue by the State's Bond Attorney.
13. The municipal attorney will proceed with the process of validation of the bond issue in the Chancery Court.
14. The paying agent or trustee will register the holders of the bonds and prepare the authenticated bonds for delivery upon completion of the printing thereof.
15. The bonds will be delivered to the purchaser along with the approving opinion of bond counsel and appropriate closing papers, and the proceeds from the sale of the bonds will be received by the municipality.
16. The municipal clerk will establish the various bond funds required under the terms of the bond issue and will establish the bond register.

FEDERAL TAX EXEMPTION FOR INTEREST ON MUNICIPAL OBLIGATIONS

The federal tax exemption of interest on municipal obligations should not be assumed to be applicable. In fact, unless a proper filing is made with the Internal Revenue Service, such interest will not be tax-exempt under the Internal Revenue Code. Also, private use of a type or to an extent not allowed by the Internal Revenue Code can cause such interest to be taxable. Further, failure to pay rebates to the Internal Revenue Service on arbitrage profits can cause such interest to be taxable under federal law. One of the responsibilities of bond counsel is to ensure that such interest will be tax-exempt when that is appropriate, and to render an opinion to that effect, and to provide guidance to the issuer on these points.

BANK ELIGIBLE BONDS

Even if interest on bonds are generally exempt from federal income taxes, banks do not really benefit from such exemption unless the bonds are found to be eligible as "qualified tax-exempt obligations" and a designation that the bonds are such is made by the municipality.

STATE LAW REQUIREMENTS FOR VALIDITY

Warning: Some issuers continue to think that more informal bank loans are somehow not subject to state law requirements for bonds. However, state statutes provide that no interest-bearing indebtedness may be incurred by any municipality unless the authority for incurring the debt is specifically provided for by statute [§ 21-33-327].

LOCAL AND PRIVATE LEGISLATION

A substantial number of municipal bond issues are authorized by local and private legislation, which is legislation that applies only to a particular locality. This may be appropriate where the circumstances are somewhat unique, or where there is a good idea that has not yet been enacted into law.

MISCELLANEOUS STATUTORY PROVISIONS RELATED
TO THE ISSUING OF BONDS OR OTHER DEBT

1. Section 17-3-9 through § 17-3-19 provide that certain municipalities may issue bonds for convention centers.
2. Section 17-5-1 through § 17-5-11 authorize municipalities and counties to jointly issue bonds for the construction, expansion, remodeling and/or maintenance and equipping of a jail in a municipality and authorize municipalities with military camps to issue bonds for certain public works systems or activities.
3. Section 21-15-25, in part, specifies the maximum compensation which may be paid to the municipal attorney for bond work.
4. Section 21-33-313 discusses the engraving, printing, appearance, denomination, registration, and evidencing of interest of bonds.
5. Section 21-33-315 specifies maturities, interest, bids, and execution on bonds.
6. Section 21-33-317 prohibits the diversion of bond proceeds for a use other than that for which the bonds were issued. A willful diversion is a felony.
7. Section 21-33-319 specifies when and for what purpose the balance of bond proceeds may be used.
8. Section 21-33-321 establishes the conditions under which any excess in the bond and interest fund may be used to purchase outstanding bonds.
9. Section 21-33-323 outlines when and how surplus funds in the bond and interest fund may be invested and details how any interest derived from such investment will be used. Treasurers Regulation No. 1 has also been promulgated to cover investment of bond proceeds.
10. Section 21-41-49 authorizes the refunding of special assessment bonds.
11. Section 27-105-367 provides for the handling of surplus moneys in a bond and interest fund and the disposition of same when the bond issue has been retired.
12. Section 31-13-1 through § 31-13-11 discuss validation of public bonds – the role of the State Bond Attorney, the actions taken by the Chancery Court, the “stamping” of validated bonds, the payment of court costs, and the State Bond Attorney’s fees and expenses.
13. Section 31-17-45 through § 31-17-59 discuss repurchase, retirement, and cancellation of bonds and repayment of unused funds by the bond paying agent.

14. Section 31-19-1 specifies that bonds must be issued on the serial payment plan.
15. Section 31-19-5 specifies the conditions under which the proceeds received from the sale of bonds, notes, and certificates of indebtedness may be invested.
16. Section 31-19-7 confirms the validity of the execution of bonds signed by officials no longer in office at the time of the sale or delivery of bonds.
17. Section 31-19-25 establishes the procedures for advertisement and sale of bonds. This provision requires public sale of bonds unless private sale is authorized.
18. Section 31-19-13 specifies the procedure for bond payments.
19. Section 31-21-1 through § 31-21-7, the Registered Bond Act, provide for the registration of bonds in order to bring Mississippi bond laws into conformance with federal legislation, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This statute also affects the methods of execution and preparation of bonds.
20. Section 31-23-51 through § 31-23-69, the Mississippi Private Activity Bonds Allocation Act, establish regulations relative to the issuance of private activity bonds in order to bring Mississippi's bond laws into conformance with federal legislation, Public Law 99-514.
21. Section 31-25-1 through § 31-25-55, the Mississippi Development Bank Act, authorize municipalities to issue certain municipal securities and to sell such securities to the Mississippi Development Bank to raise money for most of the purposes for which municipalities are authorized to issue bonds.
22. Section 31-27-1 through § 31-27-25, the Mississippi Bond Refinancing Act, specify the authority and process under which municipalities may issue refunding bonds. Section 31-15-1 through § 31-15-27 also provide refunding authority.

GLOSSARY OF SELECTED TERMS

Accrued Interest	Interest earned on a bond or security from its last interest date. The purchaser buys this interest at the time the bond is purchased and receives the entire interest on the next coupon date.
Ad Valorem Tax	A tax on the value (or assessed value or taxable value) of property.

Amortization	The systematic reduction of debt through use of serial bonds or term bonds with sinking fund payments on an actuarial basis. Also, the gradual and periodic reduction of premiums and discounts on bonds purchased and sold so as to show the true amount of assets or liabilities represented by the premiums or discounts.
Arbitrage Bond	A bond issued at a low (tax-exempt) interest rate, proceeds of which are invested at a higher (taxable) interest rate in violation of federal tax requirements. Interest earned on arbitrage bonds is fully taxed. Arbitrage profits must be rebated to the Internal Revenue Service to the extent an exemption is not established.
Average Maturity	The number of years from issue which marks the point at which half the principal remains unpaid. It is equal to the total bond years divided by the total number of bonds. The average maturity is important because it demonstrates how rapidly the issue is being paid off.
Balloon Payment	Final principal payment that is much larger than the other principal payments.
Basis Point	Hundredth of one percent of interest. If an interest rate is 5.25 percent, the 0.25 is referred to as 25 basis points.
Bearer Bond	A bond without an identified owner. The presumed owner is the person who holds it.
Bid	A proposition to purchase an issue offered for sale either in a competitive offering or on a negotiated basis.
Bidding Syndicate	One or more firms of underwriters that act together to underwrite a bond issue.
Bond Counsel	An attorney retained by the municipality with recognized expertise in municipal finance who assures the purchaser that the bond was legally issued and usually, covers tax aspects of such bond. The bond counsel's approving opinion is usually printed on each bond and states that in his opinion the municipality has complied with all legal requirements in the issuance of the bonds and that interest paid on the bonds is exempt from income tax (unless issued as taxable bonds). Without such an opinion the bonds are not usually marketable.

Bond Register	The permanent and complete record maintained by a government for each bond issue. It shows the amount of interest and principal coming due each date, the bond numbers, and all other pertinent information concerning the bond issue.
Bond Transcript	All legal documents, including appropriate minutes of city council meetings, associated with the authority to issue a bond.
Call Price	The price at which callable bonds will be redeemed if called.
Callable Bond	A type of bond which permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in the manner specified in the bond contract.
Capital Improvement Plan	A plan for capital expenditures to be incurred each year over a fixed period of years to meet anticipated needs. It sets forth each project or other contemplated expenditure in which the government is to have a part and specifies the full resources estimated to be available to finance expected expenditures.
Coupon	The part of a bond which serves as proof of interest due. Bondholders detach coupons, usually at semiannual intervals, and present them for payment to the issuer's paying agent. Now bonds must be issued as fully registered bonds without coupons in order to be tax exempt.
Current Yield	Annual interest payable on a bond divided by its current price, expressed as a percent.
Debt Limit	The maximum amount of debt that a governmental unit may incur under constitutional, statutory, or charter requirements. The limitation is usually some percentage of taxable valuation and may be fixed upon either gross or net debt. The legal provision in the latter case usually specifies what deductions from gross funded debt are allowed to calculate net debt.
Delivery Date	Date on which the bonds are exchanged for the principal; usually within 60 days after the bonds are underwritten or sold.
Discount	The difference between the par value (face value) of a bond, or other security, and the price for which it is acquired or sold. See <i>Premium</i> .

Financial Agent	Person who offers a broad range of services to municipalities seeking debt financing, including preparation of capital improvement plan, official statement and other documents, procurement of bond rating, and marketing evaluation and recommendations.
General Obligation Bond	A bond for which the full faith and credit of the issuer has been pledged for payment.
Interest	Compensation paid or to be paid for use of money, including interest payable at periodic intervals or as a discount at the time a loan is made.
Investment Grade	A bond rated at least “BBB” by Standard and Poor’s Corporation or at least “Baa” by Moody’s Investor’s Service. Bank examiners require that most bonds held in bank portfolios be investment grade.
Maturity	The date on which the principal of a bond becomes due and payable.
Negotiated Underwriting	Contractual arrangements between an underwriter and an issuer of debt in which the underwriter is given the exclusive right to underwrite the issue.
Net Interest Cost	Total interest cost plus discount or minus premium divided by total bond years (net interest cost per \$1,000 bond), divided by 10 (to turn result into a percentage).
Official Statement	Document that gives information on the bond issue and the financial, economic, and social characteristics of the issuing entity, and specifies how the funds raised by the issue will be used. Potential bidders and investors use the information included in the statement to evaluate the credit quality of the bonds and to determine the interest rates at which they would purchase the bonds. The official statement reduces the cost to both bidders and investors of acquiring credit information. Such document is referred to as the preliminary official statement until final sale information is determined.
Par Value	The face value of a security. In the case of bonds, it is the amount that must be paid at maturity. Although bonds are usually issued in denominations that are a multiple of \$5,000, a quotation of 100 means at par. A \$1,000 bond quoted at 98 costs \$980 and is selling at a discount. A \$1,000 bond quoted at 102 costs \$1,020 and is selling at a premium.

Paying Agent	A bank or other institution which acts as the agent for the municipality in making bond interest and principal payments. This bank also usually serves as registrar and transfer agent in keeping a record of all registered owners and in changing the records regarding registered owners upon sales or transfers of bonds.
Point	One full percent of interest. For example, five percent is expressed as 5 points.
Premium	The excess of the price at which a bond, or other security, is acquired over its par value. See <i>Par Value</i> .
Principal	The face amount of a bond exclusive of accrued interest.
Rating	A designation used by analysts or by investor services to represent the relative quality of a bond.
Refunding Bond	Bond used to retire another bond already outstanding. A refunding bond may be sold for cash and an outstanding bond redeemed in cash, or the refunding bond may be exchanged with holders of outstanding bonds.
Registered Bond	A bond listed in the name of the holder. When sold, it must be transferred on the books of the issuer (which may be kept by its paying agent). When fully registered, there are no coupons attached to the bond and the interest is paid to the owner by the paying agent's check.
Settlement	Exchange of bonds for purchase price. Settlement usually occurs within 60 days after the underwriting. The delay allows details of the legal record to be completed and the bonds to be printed and registered.
Underwriter	The investment house (or houses) that purchases a bond offering from the issuing government usually with a view toward public distribution.
Underwriting Syndicate	Several underwriters who collectively underwrite a single issue.
Yield	The net annual percentage of income from an investment. See <i>Current Yield</i> and <i>Yield to Maturity</i> .
Yield to Maturity	Percentage return from a bond that takes into account current yield and amortization of any premium or discount.

