County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY COUNSEL
File #: 20-405 | Board Meeting Date: 6/23/2020

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: John C. Beiers, County Counsel

Subject: Authorizing school districts and community college districts to issue and sell bonds without further action by the County

RECOMMENDATION:

Adopt a resolution providing that the governing boards of financially qualifying school districts and community college districts under the jurisdiction of the San Mateo County Superintendent of Schools may issue and sell school bonds on their own behalf pursuant to Education Code § 15140(b) without further action by the County.

BACKGROUND:

Education Code § 15140(b) permits the County Board of Supervisors to adopt a resolution providing that financially qualifying school districts and community college districts under the jurisdiction of the San Mateo County Superintendent of Schools may issue and sell bonds on their own behalf without further action of the County Board of Supervisors.

Section 15140(b) benefits the County and financially qualifying districts because it allows such districts to issue bonds through their own governing boards and to remove the Board of Supervisors as the issuer. Districts save time in their bond issuance process and the County further limits its responsibilities concerning school bonds.

Under § 15140(a), the County may issue the bonds of school districts and community college districts that are under the jurisdiction of the San Mateo County Superintendent of Schools. The districts may either sell their bonds through a negotiated sale (i.e., the districts select a single underwriter to purchase their bonds) or a competitive sale (i.e., the districts seek competitive bids from underwriters).

Alternatively, districts may issue their bonds independently from the Board of Supervisors by a competitive sale under the terms of Gov't Code § 53506 et seq., but cannot use that statutory scheme to independently issue bonds for negotiated sale.

Education Code § 15140(b) authorizes this Board to permit financially qualified districts to issue school bonds on their own behalf by either competitive sale or negotiated sale, thus extending negotiated sales directly to financially healthy districts. Section 15140(b) does not alter the other existing methods available to school districts for issuing their school bonds through the County or independently.

Section 15140(b) places the following limitations on a district's ability to issue and sell bonds independent of the Board of Supervisors:

1. It only applies to districts that do not have a "qualified" or "negative" certification in their most recent interim reports.

A. A "negative" certification means that the district's governing board has determined that, based upon then-current projections, the district will be unable to meet its financial obligations for the remainder of that fiscal year or the subsequent fiscal year. (Educ. Code § 42131(a)(1)).

B. A "qualified" certification means that the district's governing board has determined that, based upon then-current projections, the district may not meet its financial obligations for that fiscal year or two subsequent fiscal years. (Educ. Code § 42131(a)(1)).

2. It would not apply to tax and revenue anticipation notes ("TRANs") of school districts or community colleges that have not been accorded fiscal accountability status under the Education Code. Therefore, the Board must continue to issue school TRANs in the name of those districts that qualify for such issuances. This Board has previously authorized the County Manager to execute notifications of non-action in connection with pooled TRANs (Resolution No. 069999), which remains in effect.

3. It does not entirely remove the County from the school bond process. Although the Board of Supervisors would not be the bond issuer, the offices of the County AuditorController and Treasurer-Tax Collector will still be involved in the school bond process in connection with the establishment of bond funds in the County treasury, the investment of bond proceeds as part of the Treasury Pool, and the levy of the appropriate tax rates for bond repayment.

4. It does not require districts to issue their own school bonds. They may still request the County to issue their bonds.

As noted, the County retains certain responsibilities relating to school bonds issued by districts and community colleges under § 15140(b). The proposed resolution provides that the County shall levy and collect taxes, pay bonds from the taxes or funds pledged by the district, and hold bond proceeds and tax funds for school bonds pursuant to law for school bonds duly issued and sold by a district.

The resolution also contains the following disclaimers and limitations on the County's responsibilities and liabilities concerning bonds districts may issue under § 15140(b):

1. Except for carrying out its discrete statutory obligations, the County, shall have no obligation or liability for any act or omission that is in any way related to any bonds issued or sold pursuant to the authority granted in the resolution, including but not limited to any proceedings for

the sale and issuance of the bonds, the validity of the bonds, or any disclosure issues related to the bonds, or the determination of whether a school district is eligible to issue and sell bonds independently under § 15140(b).

2. The County does not take responsibility for the districts' sale and issuance of their own bonds, or the districts' "continuing disclosure" obligations under securities laws.

3. The districts' bonds are not a debt of the County.

4. The County's obligations in connection with the bonds are limited to its legal obligations to levy and collect taxes, pay bonds from such taxes or other funds pledged by the districts' governing boards, and hold bond proceeds and tax funds for the school bonds, as specified in § 15140(b).

5. The County does not take responsibility for establishing tax rates or funds or accounts for any bonds due to a district's failure to timely provide the Auditor and Treasurer with information that their offices need to carry out their duties in connection with the bonds.

FISCAL IMPACT:
There is no direct fiscal impact to the County for taking the recommended action. However, providing this general authority means that the County's role in approving school district and community college districts bond issues would diminish in favor of the respective district boards. This would allow County staff to redirect time and resources (previously spent processing school bond issuances) to County matters.