



Overview of Voter Approval Requirements for Unlimited Tax General Obligation Bonds

One of the most common methods of financing capital improvements for local governments (municipal corporations) is through the issuance of municipal bonds known as “unlimited tax general obligation bonds” or “UTGO Bonds.” Local governments are authorized to issue UTGO Bonds pursuant to Article 7, Section 2(b) of the Washington Constitution and laws of the state of Washington (including, but not limited to, chapters 39.36, 39.46 and 84.52 RCW). UTGO Bonds must be approved by the voters within the local government. UTGO Bonds are secured by and payable out of annual property taxes, in excess of regular property taxes, unlimited as to rate or amount. In other words, a local government is obligated to levy excess property taxes at whatever rate is necessary to repay the UTGO Bonds. Further, UTGO Bonds constitute a general obligation of the local government, and, as such, the full faith, credit and resources of the local government are also pledged for their repayment.

Although this summary is intended as a guide to seeking voter approval of UTGO Bonds, it cannot replace the expertise and advice of bond counsel (a nationally recognized lawyer or law firm with a special expertise in municipal bond law). State (and Federal) laws, rules and regulations governing municipal bonds are complex and constantly changing. Consequently, a local government’s first step in seeking voter approval of UTGO Bonds is to consult with bond counsel.

4 Authority to Issue UTGO Bonds

- Local governments have broad authority to incur indebtedness for a variety of purposes. Nonetheless, this authority is constrained by the rule that a local government may exercise only such powers “expressly granted by the legislature, those necessarily implied or incident to the powers granted, and those essential to the legislature’s declared purpose.” *Moses Lake Sch. Dist. No. 1 v. Big Bend Community College*, 81 Wn.2d 551, 556 (1972).

- UTGO Bonds must be approved by voters within the local government as discussed later under the Voter Approval section.

4 Debt Limitations

- The principal amount of UTGO Bonds may not exceed the total constitutional and statutory debt limit applicable to the local government, less debt currently outstanding at the time of issuance of the UTGO Bonds. For example:

- The total indebtedness of a school district, including voted debt (UTGO Bonds) and non-voted debt (financing leases, conditional sales contracts and limited general obligation bonds), may not exceed 5% of the value of the taxable property (“assessed value” or “AV”) within the school district.
- Voted indebtedness for cities may not exceed 2.5% of AV for general municipal purposes (any outstanding non-voted or councilmanic debt is counted against this 2.5%); 2.5% for certain utility purposes; and 2.5% for certain parks, open space and economic development purposes. The total amount of voted and non-voted debt may not exceed 7.5%,

4 Capital Purposes

- Article 7, Section 2(b) of the Washington Constitution and RCW 84.52.056 provide that UTGO bonds may be issued for “capital purposes only.”

- Significantly, Article 7, Section 2(b) expressly prohibits the use of UTGO Bond proceeds for the acquisition of “replacement of equipment.” This generally means that UTGO Bond proceeds may not be utilized to replace any equipment by new equipment serving the same purpose, in the same way, with the same expected useful life as the replaced equipment when installed.

- UTGO Bond proceeds may also be used for the payment of incidental costs and costs related to the issuance, sale and delivery of the UTGO Bonds, including, but not limited to: fiscal and legal expenses; costs of obtaining bond ratings; printing and advertising costs; capitalized interest for up to six months after completion of construction; necessary and related engineering, architectural, planning and inspection costs; costs of the election; and other similar activities.

4 Approval Requirements for UTGO Bonds

UTGO Bonds require a two-step *approval* process: (1) the governing body of the local government adopts a resolution or ordinance (depending on the local government) (the “election resolution”) submitting a bond ballot proposition to the voters with the local government; and (2) voters approve the bond ballot proposition at an election.

4 Election Resolution

- In the first step of the approval process, the governing body of the local government must approve, by resolution and at an open public meeting, a UTGO Bond ballot proposition to be submitted to the qualified voters within the local government. The ballot proposition asks whether the local government shall issue UTGO Bonds to pay the costs of certain capital projects and levy annual excess property taxes to repay the UTGO Bonds.

- Bond counsel should prepare the election resolution, which includes the ballot proposition. Drafting attractive, appealing and lawful bond ballot propositions is important and challenging. It is not advisable for the local government to attempt to prepare its own election resolution. If it is drawn incorrectly, the election may not be valid. *Remember, local governments must comply strictly with the Open Public Meetings Law (chapter 42.30 RCW). Any action taken at meetings failing to comply with the Open Public Meetings Law shall be null and void.*

4 Basic Elements of the Election Resolution

- *Purpose:* Describe clearly the anticipated capital purposes to be paid for with UTGO Bond proceeds.

- *Election Date:* Request that the county auditor, who is the *ex-officio* supervisor of elections, call and conduct a “special election” on one of the four statutory election dates to submit the bond ballot proposition to the local government’s voters for their approval or rejection.

- *Maximum Amount and Maturity:* Establish the maximum principal amount of the UTGO Bonds and the maximum term of years or period of time that the local government has to repay the principal of the UTGO Bonds. Although the most common maximum term for UTGO Bonds is 20 years, State law does permit a maximum term of 40 years. Federal tax law, however, limits the term of tax-exempt bonds (including UTGO Bonds) to 120% of the useful life of the project to be financed.

- *Ballot Proposition Form:* Recommends the form of the bond ballot proposition (or title). State law prescribes both the form and content for bond ballot propositions. The ballot proposition asks the voters to approve two things: (1) additional debt capacity; and (2) additional taxing authority to repay that debt. It is important that bond counsel draft (or have the opportunity to review) the ballot proposition form to ensure sufficiency to be able to issue bonds.

- *Notice of Ballot Proposition Contents:* Requests that the local government official (and bond counsel) receive notice of the contents of the ballot proposition as prepared by the auditor before the auditor prints the ballot proposition for distribution to the voters.

4 Voter Approval

The next step in the approval process requires the local government voters to approve the bond ballot proposition at a properly conducted election. UTGO Bonds must be approved by 60% of the qualified voters within the local government. In addition, the total number of voters casting ballots at the election cannot be less than 40% of the number of votes cast in the *last state general election*. Further, a local government may only place a bond ballot proposition before its voters twice in any calendar year.

4 Election Dates

Currently, local government bond elections in Washington are permitted on only four specified dates each year. The following chart outlines these election dates and the various deadlines for filing the election resolution with the county auditor (discussed further below).

Election Type	Election Date	Deadline for Filing Resolution with County Auditor
Special	2 nd Tuesday in February	46 days before election
Special	4 th Tuesday in April (3 rd Tuesday in April for 2012)	46 days before election
Primary	1 st Tuesday in August	3 Fridays before Memorial Day
General	1 st Tuesday after the 1 st Monday in November	Primary election day (1 st Tuesday in August)

4 Election Resolution Filing Deadlines

The auditor may call an election to authorize UTGO Bonds; provided that a request in the form of an election resolution is properly filed with the auditor. For primary elections, the election resolution must

be filed with the auditor no later than the Friday immediately before the first day of the regular candidate filing period (the Monday two weeks before Memorial Day). For general elections, the election resolution must be filed with the auditor no later than the primary election day (the first Tuesday in August). Therefore, if a measure fails at the August primary, it is not possible to re-run the measure at the November general election, unless some form of alternative election resolution has been filed with the auditor by the August primary date. For all other election dates, the election resolution must be filed with the auditor at least 46 days before the election date. See the chart above for a summary.

4 Prosecuting Attorney or City Attorney Approval

Once the election resolution is filed with the auditor, the county prosecuting attorney (or, for a city, the city attorney) must approve the bond ballot proposition title. State law mandates the county prosecuting attorney (or, for cities, the city attorney) prepare the bond ballot proposition title. As a practical matter, however, the form of the bond ballot proposition title in the election resolution is usually approved.

4 Auditor Notice of Ballot Proposition Title Form to Local Government

After the county prosecuting attorney or city attorney, as applicable, approves the bond ballot proposition title, the auditor has a statutory duty to give the local government notice of the contents of the ballot proposition so that, if there are changes made by the auditor or prosecuting attorney, the local government will have sufficient time to review, and possibly object to, such changes. Significantly, a local government may appeal the form of bond ballot proposition title prepared by the auditor to the superior court of the county within 10 days after the election resolution is first filed with the auditor.

4 Notice of Election

The auditor must give notice of the proposed election by at least one publication not more than 10 nor less than three days prior to the election in a newspaper of general circulation within the county. If the county chooses to mail a local voters' pamphlet to each residence, no notice of election need be published.

4 Vote by Mail

For elections conducted by mail ballot (and for absentee ballots in polling place elections), the auditor is required to mail each active voter a ballot at least 18 days prior to an election date. Local governments contemplating a UTGO Bond should consult with the county auditor to determine whether the election will be conducted by mail ballot.

4 Local Voters' Pamphlet

If a county authorizes the publication of a local voters' pamphlet under Chapter 29A.32 RCW, a local government seeking voter approval of a UTGO Bond ballot proposition may need to prepare an explanatory statement and appoint committees to prepare statements for and against the ballot proposition. Local governments should consult with the county auditor to determine: (1) whether a local voters' pamphlet will be authorized, and (2) the necessary administrative rules that govern the pamphlet's content, including, most importantly, the deadlines for submitting the explanatory statement and statements for and against the ballot proposition.

4 Bilingual Election Materials

Under federal law (Voting Rights Act), certain counties in Washington have a legal duty to provide bilingual election materials, including bond ballot propositions, notices and voter's pamphlets. These counties are King County (Chinese) and Adams, Franklin and Yakima Counties (Spanish). Local governments within these counties should consult with their respective auditors to determine how these bilingual materials will be prepared and distributed.

4 Public Disclosure Laws

- As part of the UTGO Bond election process, a local government must carefully observe all public disclosure laws. Under RCW 42.17.130, no elected official nor any employee of any public agency may use or authorize the use of any facilities of a public office or agency, directly or indirectly, for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency includes, but is not limited to, the use of stationary, postage, machines, equipment, vehicles, office space, publications of the public office or agency, and clientele lists of persons served by the office or agency.

- There are three exemptions that allow local governments to: (1) adopt a resolution or ordinance in support of or in opposition to a ballot proposition; (2) make public statements as elected officials in support of or in opposition to ballot propositions at press conferences; and (3) engage in or authorize activities that are a normal part of the regular conduct of the local government's affairs. The administrative regulations of the Public Disclosure Commission ("PDC"), chapter 390 05 WAC, provide exemptions and a definition of "normal and regular conduct."

- Sanctions for violation of these laws and regulations may be severe. Any person who violates these laws could be subject to a civil penalty up to \$10,000 for each violation. Further, the result of an election might be voided if a court finds that a violation of the public disclosure laws probably affected the outcome of the election.

- The PDC has a variety of useful publications to assist local governments in complying with Public Disclosure Laws. Specifically, the PDC has published election campaign guidelines for local governments entitled *Guidelines for Local Government Agencies in Election Campaigns* ("Guidelines"), which provide an administrative interpretation of the restrictions contained in RCW 42.17.130. Copies of the Guidelines are available online at www.pdc.wa.gov. It also may be advisable that any local government-written materials be submitted to PDC staff for review and comment prior to distribution.

4 Election Results

Under State law, the county canvassing board must complete the canvass of votes and certify the election results 15 days after a primary or special election and 21 days after a general election.

4 Election Recount

Any group of five or more registered voters may file a written application for recount of votes upon any question, including UTGO Bonds. The application must be filed within three business days after the

county canvassing board has declared the official results of the primary or election for the issue which the recount is requested.

4 Election Contest

Pursuant to chapter 29A.68 RCW, a voter may challenge the results of an election if an error or omission has occurred or is about to occur in the issuance of a certificate of election. The challenge may be initiated by filing an affidavit with any justice of the Washington Supreme Court, judge of the Court of Appeals, or judge of the Superior Court in the proper county. The affidavit must be filed with the appropriate court no later than 10 days following the official certification of election or, in a recount, 10 days after the official certification of the amended abstract.

4 Other Suggestions

Other practical suggestions when planning for a UTGO Bond election include the following:

- assemble the financing team early.
- allow ample time for preparation, review and approval of documents.
- set realistic priorities for actions to be taken.
- strive for consistency and accuracy in public statements.
- never try to write your own ballot title, especially for a bond issue.
- never hesitate to ask questions.

Please contact any of our municipal finance attorneys if you have questions regarding UTGO Bond elections.