LEGAL OPINIONS
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Loans and Other Methods of Borrowing Money

Q. Does a town board need to get town elector authorization in order to borrow money?

A. The answer to this question depends on the type of borrowing the town board is considering. All municipalities have the option to borrow money, as long as their total indebtedness does not exceed 5% of the municipality’s equalized value. See Wis. Stat. § 67.03(1). Municipalities may borrow money via the methods outlined in Wis. Stat. ch. 67, some of which require elector approval and some which do not.

Elector approval is not required for one of the most common forms of municipal borrowing, issuing “promissory notes,” also known as taking out a loan from a bank or other financial institution. Municipalities may issue promissory notes for any public purpose, including paying general and current municipal expenses and funding larger projects such as road construction or building a town hall. Promissory notes must generally be paid off within 10 years, although extensions of up to 10 additional years may be granted. See Wis. Stat. § 67.12(12). The decision about whether to take out a loan is entirely up to the town or village board. To take out a loan, the board must pass a resolution, via a majority vote at a properly noticed board meeting, specifying how much money will be borrowed and for what purpose. The financial institution offering the loan typically has a template resolution for this purpose. After passing the resolution, the board must establish a debt service fund and levy a tax to pay off the principal and interest on the loan. This tax is considered an exception to the municipal levy limit, as explained on the next page. The tax may not be repealed until the debt is paid off or the municipality has accrued a surplus.

A few examples of other methods municipalities can use to borrow money include general obligation bonds, borrowing in anticipation of future revenue, and special assessment bonds. Towns and villages should consult their local municipal attorneys when using these methods to ensure that all legal requirements are met. You can also find detailed information about the many borrowing methods towns and villages can use in the Basic Financial Administration for Wisconsin Local Government handbook, available for sale on the WTA website: https://www.wisctowns.com/resources/publications/.

General Obligation Bonds
General obligation bonds may be issued to fund public purpose “projects,” as defined in state law, such as highway or building projects. See Wis. Stats. §§ 67.04 and 67.05. General obligation bonds can be useful for very large projects that will take longer than 10 years to pay in full. However, they require more time and higher costs to issue than other borrowing methods, so they are used less frequently than promissory notes. To authorize general obligation bonds, the town or village board must adopt an initial resolution stating the purpose and amount of the proposed bonds. In towns, the town electors must then vote at either an annual or special town elector meeting to authorize the town board to issue the bonds. See Wis. Stat. § 60.10(2)(d). In both towns and villages, these bonds also generally require electoral approval via a referendum process.
Borrowing In Anticipation of Future Revenue
A municipality may borrow against future federal or state aid, tax revenue, or other deferred payments by issuing municipal bonds in anticipation of that revenue. See Wis. Stat. § 67.12(1). This debt must be issued in the same fiscal year the municipality is entitled to receive the payments. The bonds issued may not exceed 60% of the municipality’s total actual and anticipated receipts in that fiscal year, and the debt must be repaid within 18 months after the first day of that fiscal year. This type of borrowing is a board decision that does not require elector approval at a town meeting or referendum. The town or village board must adopt a resolution indicating the amount and purpose of the bonds to be issued, as well as the anticipated revenue that will be used to secure the debt. This type of debt does not count against the municipality’s total indebtedness limit.

Special Assessment Bonds
If a municipality plans to use special assessments to fund a project, it can use those funds as collateral for issuing either general obligation-local improvement bonds or special assessment B bonds, allowing the government to borrow cash to pay the immediate costs of the improvements instead of having to wait for the assessments to be paid. See Wis. Stats. §§ 66.0713 and 67.16. The amount of the bonds cannot exceed the aggregate amount of unpaid assessments, and the revenue from these bonds may only be used on the project for which the municipality created the assessment. This type of borrowing is a board decision, based on a resolution adopted at a town or village board meeting, and does not require elector approval at a town meeting or referendum.

Q. I’ve heard towns can take out loans from the state. How does that process work?
A. The Board of Commissioners of Public Lands (BCPL) manages state trust funds from which it has the authority to grant loans to municipalities for public purpose projects, such as such as acquisition and construction or improvement of public land, waters, property, highways, buildings, equipment, or facilities. See Wis. Stats. ch. 24. The procedure for taking out a loan from the BCPL is essentially the same as borrowing on promissory notes, except that the loan comes from the state as opposed to a bank, and the maximum loan term is 20 years. BCPL loans have no prepayment penalties and typically have competitive interest rates, so this option may be a good deal for your municipality. More information and loan application documents and instructions are available on the BCPL website: https://bcpl.wisconsin.gov/Pages/LoanProgramHomePage.aspx.

Q. If we take out a loan, how will this affect our municipal levy limit?
A. There is an exception to the levy limit for paying back principal and interest on new debt taken out after July 1, 2005. See Wis. Stats. §§ 66.0602(3)(d) and 67.12(12)(ee). Therefore, if you have scheduled principal and interest payments on a loan due in 2023, those amounts may be included as an adjustment to your town or village’s total allowable levy limit for 2022 (to be collected in 2023) without having to follow any special procedures to exceed the levy limit. You simply need to note the adjustment in Section D, Line E on the Municipal Levy Limit Worksheet. You may continue to make adjustments to the levy for the amount of scheduled loan payments due each year until the loan is paid off in full. Note that outstanding debts must be clearly indicated on the budget summary you are required to include with your town or village’s budget public hearing notice. See Wis. Stat. § 65.90(3).