

Chapter 17

Funding a Library Building Project*

A library building project does not have to be a painful experience. There will be anxious moments in every project, such as the minutes before construction bids are opened. There will also be times when it appears that the legal process takes forever to complete. But with proper planning, good and open communication and the assistance of qualified, experienced professionals, the process and the end result can be very rewarding.

There are two types of bonds that libraries can use to fund a building project:

- a. General obligation bonds, and
- b. Lease financing (a.k.a. Building Corporation or Holding Corporation bonds)

House Enrolled Act 1001 requires that before any debt (whether general obligation bonds or leases) can be issued by a non-elected library board, the library must obtain the approval of a specific elected entity. (IC 6-1.1-17-20.5)

This approving body will either be the county council or the city/town council depending on the library district. If the library district is coterminous with a city or town or was originally created by a city or town, then the approving entity will be the city or town council. However, if the library district expands beyond the city or town or the library was originally created by a township or the county, then the approving entity will be the county council.

This approval must be obtained prior to issuing the bonds; however the timing of this approval is otherwise up to the library. It is political decision whether the Board requests this approval before or after the petition remonstrance process or referendum. Discuss this issue with your library counsel and bond counsel.

General obligation bonds

General Obligation Bonds are limited in principal amount to one third (1/3) of two percent (2%) of the assessed valuation of the library taxing district – State Constitutional debt limitation

Lease financing

* The material in this chapter is intended for general information purposes only and does not constitute legal advice. The library board should consult financial counsel, bond counsel, or local legal counsel to determine how laws apply to specific situations.

With a lease financing, a separate not-for-profit corporation is formed using patrons in your community. This building or holding corporation issues the bonds which finance the construction of the library building and leases the facility back to the library for a predetermined number of years, usually 20 years. Once the bonds are paid off, the Building Corporation transfers title to the building back to the library.

Many libraries in Indiana, due to the cost of the building, use the lease method of financing. Lease financing allows for a library building project to exceed the maximum constitutional debt limitation placed on the general obligation bond. In library districts where the assessed valuation does not raise enough money for a project, the library would need to use the lease financing method of obtaining bonds.

A. Outline of Procedures for the Preliminary Determination Process for financing a Controlled Project

1. Controlled Project (IC 6-1.1-20-1.1):

A controlled project is defined as a construction project for which the total project cost is at least \$1,000,000 and exceeds the lesser of: i) 1% of the total gross assessed valuation of the library district or ii) \$2,000,000. The controlled project definition applies to a project if some portion of the project is financed, whether by general obligation bonds or a lease financing.

If the project is non-controlled because it does not meet the above test, no other process is required which permits taxpayers or voters to stop the project through petition/remonstrance or referendum. The library will still need to follow the lease or general obligation bond process, as applicable.

2. Petition/Remonstrance Process (IC 6-1.1-20-3.1):

If the library's Controlled Project is equal to or less than the lesser of (a) 1% of the total gross assessed valuation of the library district or \$12,000,000 per building, the library will need to follow the process which will permit the taxpayers or voters to request of petition/remonstrance process.

The following steps should be followed if the petition/remonstrance process applies to the Controlled Project:

- a. Publish and mail notice of hearing on a preliminary determination to issue bonds. IC 6-1.1-20-3.1 (*10 day notice*)
- b. Meeting of Board of Trustees to hold hearing and adopt resolution making a preliminary determination to issue bonds or enter into a lease, as applicable. (*Note that this resolution establishes the maximum financing terms*)
- c. Publish and mail notice of preliminary determination to issue bonds. IC 6-1.1-20-3.1 and IC 5-3-1 (*begins 30 day application period in which 100 voters and taxpayers may request that the petition/remonstrance process apply to the project*)
- d. If a petition requesting petition/remonstrance process is filed, proceed with next step; if not, skip to steps for general obligation bonds or leases, as applicable.
- e. Certification by the Voter Registration Office/County Auditor of the number of signers requesting application of petition/remonstrance process who are owners of real property or voters within the library district. IC 6-1.1-20-3.1 (*the lesser of 100 people or 5% of the property tax owners or voters filing a petition can force a petition/remonstrance race*)
- f. Publish and mail notice of the applicability of the petition/ remonstrance process. IC 6-1.1-20-3.2 (*publication date determines timing of race*)
- g. Race period occurs beginning from the 30th day ending on the 60th day (*a thirty day period*) after notice of application is published, during which taxpayers and voters circulate petitions in favor of bonds and remonstrances against bonds (*simultaneously*) (*whichever side gets the most valid signatures of taxpayers and voters, wins*).
- h. Certification by the Voter Registration Office/County Auditor of the number of signers of each who are owners of real property or voters within the library district. If the Library wins it moves on to general obligation bond or lease steps, as applicable. If the Library loses, it may not hold a new preliminary determination hearing for one year on a substantially similar project.

3. Referendum Process (IC 6-1.1-20-3.5):

If the library's Controlled Project exceeds the lesser of (a) 1% of the total gross assessed valuation of the library district or \$12,000,000 per building, the library will need to follow the process which will permit the taxpayers or voters to request the referendum process.

The following steps should be followed if the referendum process applies to the Controlled Project:

- a. Publish and mail notice of hearing on a preliminary determination to issue bonds. IC 6-1.1-20-3.5 (*10 day notice*)
- b. Meeting of Board of Trustees to hold hearing and adopt resolution making a preliminary determination to issue bonds or enter into a lease, as applicable. (*Note that this resolution establishes the maximum financing terms*).
- c. Publish and mail notice of preliminary determination to issue bonds. IC 6-1.1-20-3.5 and IC 5-3-1 (*begins 30 days application period in which 100 voters and taxpayers may request that the referendum apply to the project*).
- d. If a petition requesting referendum process is filed, proceed with next step; if not, skip to steps for general obligation bonds or leases, as applicable.
- e. Certification by the Voter Registration Office/County Auditor of the number of signers requesting application of referendum who are owners of real property or voters within the library district. IC 6-1.1-20-3.5 (*the lesser of 100 people or 5% of the property tax owners or voters filing a petition can force a referendum*)
- f. Library files with the County Auditor and the Voter Registration Office certification and request for the referendum
- g. County Auditor certifies the question to the County Election Board which either puts the question on the ballot of a general, municipal or primary election or schedules a special election as requested by the Library and dictated by the timing of the next scheduled election.
- h. If there is a scheduled election within six months of the certification of the question by the Auditor, the project is placed on the ballot of the scheduled election. Otherwise the question will be placed on the ballot of a special election. The special election must be held not sooner than 90 days nor later than 120 days after the question is certified by the County Auditor.
- i. Certification of the election results. If the Library wins, it moves on to general obligation bond or lease steps, as applicable. If the Library loses, it may not hold a new preliminary determination hearing for one year on a substantially similar project.

B. Outline of Procedures for the Issuance of Library General Obligation Bonds

If the Library's project is a Controlled Project it should have completed the petition/remonstrance or referendum process as outlined above before proceeding with the general obligation bond steps.

Remember that a Library must obtain the approval of the County Council or City/Town Council prior to issuing bonds (IC 6-1.1-17-20.5). This step needs to be inserted in the outline and timetables at the point most strategically advantageous for the library.

1. Meeting of Board of Trustees to adopt the bond resolution. IC 6-1.1-20-9.
2. Publish notice of hearing on appropriation of bond proceeds. (*publish twice, on week apart; first publication at least 10 days prior to hearing*)
3. Meeting of Board of Trustees to hold hearing on appropriation of bond proceeds and adopt appropriation resolution. IC 6-1.1-18-5
4. A copy of the additional appropriation proceedings is certified by the secretary to the Department of Government Finance.
5. Publication of the bond sale notice in accordance with IC 5-1-11 and 5-3-1. In order to obtain the best bids, it is recommended that the bond sale notice also be published in The Court & Commercial Record, 431 N. Pennsylvania, Indianapolis, Indiana 46204. If the bonds are to be rated, the rating should be applied for by this time.
6. If the bond issue is over \$1,000,000, an official statement should be prepared by this time to distribute to the potential purchasers. It is appropriate to arrange for the printing of the bonds at this time.
7. Meeting of Board of Trustees to receive and award the bids for the bonds. The dealers who bid on bonds recommend that the bond sale be scheduled near the middle of the day on a Tuesday, Wednesday or Thursday which is not a day before or after a holiday.
8. Bond counsel prepares final transcript certificates and bonds. Submit transcript to bond counsel for approval. Check with registrar and paying agent, bond counsel and purchaser to determine when bonds will be ready for delivery. Schedule delivery of bonds with purchaser, bond counsel and registrar and paying agent.
9. Delivery of and payment for bonds -- the closing.

**C. General Obligation Bonds for Controlled Project Proposed Timetable --
Petition/Remonstrance Process**

****IF PETITION/REMONSTRANCE RACE APPLIES TO PROJECT****

Day 1	Publish and mail notice of preliminary determination hearing
Day 11	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution and preliminary bond resolution
Day 13	Post, publish and mail notice of preliminary determination to issue bonds (<i>first publication</i>)
Day 20	Publish notice of preliminary determination to issue bonds (<i>second publication</i>)

Day 43	End of application period -- Petition for application of petition and remonstrance process is filed with Voter Registration Office/County Auditor
Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting application of petition and remonstrance process
Day 59	Publish and mail notice of applicability of petition and remonstrance process
Day 88	Voter Registration Office issues petition and remonstrance forms - - beginning of petition and remonstrance circulation
Day 119	End of petition and remonstrance period -- file petitions and remonstrances with Voter Registration Office/County Auditor
Day 134	Voter Registration Office/Auditor certifies taxpayer signatures on petitions and remonstrances to Board of Trustees
Day 135	Board of Trustees meeting to receive Auditor's certificate with petitions and remonstrances; if petition in favor wins, adopt final bond resolution
Day 135	Publish notice of additional appropriation hearing
Day 140	City/Town Council or County Council meeting to approve bond issue
Day 146	Board of Trustees meeting to hold hearing on additional appropriation
Day 147	Publish bond sale notice (<i>first publication</i>)
Day 154	Publish bond sale notice (<i>second publication</i>)
Day 161	Bond sale
Day 175	Closing -- deliver bonds and receive money

D. General Obligation Bonds for Controlled Project Proposed Timetable -- Referendum Process Applies

****IF REFERENDUM APPLIES TO PROJECT****

Day 1	Publish and mail notice of preliminary determination hearing
Day 11	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution and preliminary bond resolution
Day 13	Post, publish and mail notice of preliminary determination to issue bonds (<i>first publication</i>)
Day 20	Publish notice of preliminary determination to issue bonds (<i>second publication</i>)
Day 43	End of application period -- Petition for application for referendum is filed with Voter Registration Office/County Auditor

Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting application of referendum
Day 65	Library files Certification of Voter Registration Office and letter requesting question be placed on ballot with County Auditor
Day 79	County Auditor certifies question to County Election Board
Day 109	County Election Board places question on ballot of next scheduled election, or if no scheduled election within next six months, special election scheduled. Special election to occur no sooner than 90 days nor later than 120 days after Auditor certifies the question
Day 200	Election
Day 207	Board of Trustees meeting to receive election results; if win, adopt final bond resolution
Day 210	Publish notice of additional appropriation hearing
Day 215	City/Town Council or County Council meeting to approve bond issue
Day 220	Board of Trustees meeting to hold hearing on additional appropriation
Day 224	Publish bond sale notice (<i>first publication</i>)
Day 231	Publish bond sale notice (<i>second publication</i>)
Day 238	Bond sale
Day 252	Closing -- deliver bonds and receive money

E. General Obligation Bonds for Controlled Project Proposed Timetable

****IF NO REQUEST FOR APPLICATION OF PETITION & REMONSTRANCE or REFERENDUM PROCESS****

Day 1	Publish and mail notice of preliminary determination hearing
Day 11	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 13	Post, publish and mail notice of preliminary determination to issue bonds (<i>first publication</i>)
Day 20	Publish notice of preliminary determination to issue bonds (<i>second publication</i>)
Day 43	End of period to request application of petition and remonstrance process
Day 44	Publish notice of additional appropriation hearing
Day 50	City/Town Council or County Council meeting to approve bond issue
Day 54	Board of Trustees meeting to hold hearing on additional appropriation and adopt final bond resolution

Day 55	Publish bond sale notice (<i>first publication</i>)
Day 62	Publish bond sale notice (<i>second publication</i>)
Day 69	Bond sale
Day 83	Closing—deliver bonds and receive money

F. General Obligation Bonds for Non-controlled Project Proposed Timetable

Day 1	Board of Trustees meeting to adopt bond resolution
Day 2	Publish and post notice of additional appropriation hearing (<i>first publication</i>)
Day 9	Publish notice of additional appropriation hearing (<i>second publication</i>)
Day 10	City/Town Council or County Council meeting to approve bond issue
Day 14	Board of Trustees meeting to hold hearing on additional appropriation
Day 15	Publish bond sale notice (<i>first publication</i>)
Day 22	Publish bond sale notice (<i>second publication</i>)
Day 29	Bond sale
Day 44	Closing -- deliver bonds and receive money

G. Library Lease Financings Under IC 36-1-10 for Controlled Project

Basics

- A library is limited to borrowing directly one-third of its net assessed valuation times two percent. Previously, the formula was 2% of its net assessed valuation. However, after the tripling effect of the change to a market value system the General Assembly requires a governmental entity to divide by three before applying the 2% to arrive at the debt limitation. If the cost of the building project and financing will put the library over its debt limitation, a lease financing is used to fund the project.
- The library deeds the real estate on which the building is to be built, or in the case of a renovation project, the building to be improved, to the building corporation;
- the building corporation issues its first mortgage bonds to finance the cost of construction;
- the building corporation leases the building to the library; and
- the library pays lease rental to the building corporation in an amount which matches the debt service payments on the building corporation's bonds

Procedures

An architect should be hired and begin to prepare plans and specifications

The taxpayers have two different mechanisms to oppose projects: the petition/remonstrance process and the referendum process. Which process applies is determined by the size of the project and library's assessed valuation. See discussion above. One or the other applies but not both.

Petition/remonstrance process

- The board of trustees holds hearing following notice and after meeting publishes notice of determination to enter into lease
- 100 owners of real property or voters may within 30 days petition for application of petition/remonstrance process to project
- If valid petition is filed, notice that the petition/ remonstrance process has been requested is published and mailed
- Petitions in favor of project and remonstrances against project are circulated concurrently between 30 and 60 days after publication of notice that petition/remonstrance process has been requested
- If more taxpayers or voters oppose project than support project, it may not be pursued for one year

Referendum process

- The board of trustees holds hearing following notice and after meeting publishes notice of determination to enter into lease
- 100 owners of real property or voters may within 30 days petition for application of the referendum
- Election is held; If more voters oppose project than support project, it may not be pursued for one year
- The library which desires to lease a building must receive a petition signed by 50 or more taxpayers of the library district requesting such lease arrangement
- The board of trustees should meet to accept the petition and determine, after an investigation, that the library project is needed
- A not-for-profit corporation should be formed as the building corporation
 - Board of trustees members and employees may not serve on the building corporation
 - Building corporations must abide by the open meeting law
 - Building corporation members are often people in the community who are supportive of the library and would like to volunteer their time to assist in the financing of the project
 - The working group, which may include the library director, local attorney, financial advisor, bond counsel and architect (and construction manager, if applicable), will meet to develop a proposed budget for the financing.

This budget will be used to determine the term, rental payment dates and payment amount for the lease

- It is important that all members of the working group are comfortable with the budget because this information will be used by the financial advisor to determine the maximum lease rental amount and term
- Board of trustees and building corporation approve form of lease and publish notice of hearing on lease
- Town/City Council or County Council must approve borrowing
- Board of trustees holds public hearing on lease to receive comments on whether the lease terms are fair and reasonable
- Preliminary plans and specifications and the proposed lease must be available for inspection prior to the hearing
- The board of trustees and building corporation execute the lease
- Publish notice of execution of lease
- Two professional appraisers prepare a joint appraisal of real estate to be sold to building corporation
- If real estate was acquired by the library within the last three years, the amount the building corporation pays the library for the real estate may not be less than the original purchase price
- Publish notice of receipt of construction bids
- Receive and award construction bids to lowest responsible and responsive bidder
- Publish bond sale notice (if a competitive sale is used)
- Besides local papers, also publish in the Indianapolis in The Court & Commercial Record
- Bond Sale (this may be negotiated with an underwriter if the library chooses)
- Delivery of bonds and money -- the closing
- Bond counsel delivers opinion that lease is a valid obligation and that interest on bonds is tax-exempt

H. Library Lease Financing Proposed Timetable

**** If no request for application of petition & remonstrance process or referendum ****

Day 1	Preliminary budget meeting
Day 2	Publish and mail notice of preliminary determination hearing
Day 12	Board of Trustees meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 14	Publish and mail notice of preliminary determination to enter into lease
Day 44	End of period to request application of petition and remonstrance process

Day 45-74	Circulate Taxpayers Petition (<i>if no application of petition and remonstrance process or referendum is filed</i>) and submit to Auditor for certification
Day 75	Form Building Corporation
Day 76	Building Corporation meeting to approve form of lease
Day 76	Board of Trustees meeting to receive taxpayers petition and to approve form of lease and formation of Building Corporation
Day 77	City/Town Council or County Council meeting to approve borrowing
Day 78	Publish notice of hearing on Lease
Day 111	Board of Trustees meeting to hold hearing on Lease
Day 112	Publish Notice of Execution of Lease
Day 140	Complete appraisal proceedings for sale of real estate
Day 141	Board of Trustees meeting to approve construction documents
Day 142	Publish notice of construction bids (<i>first publication</i>)
Day 149	Publish notice of construction bids (<i>second publication</i>)
Day 165	Publish Bond Sale Notice (<i>first publication</i>)
Day 171	Receive construction bids
Day 172	Publish Bond Sale Notice (<i>second publication</i>)
Day 178	Board of Trustees meeting to award construction bids and assign bids to Building Corporation
Day 178	Building Corporation meeting to approve borrowing and Trust Indenture, to deem Official Statement nearly final and accept assignment of construction bids
Day 185	Bond Sale
Day 199	Closing
Day 200	Commence Construction

I. Library Lease Financing Proposed Timetable – Petition/remonstrance Process

****If petition and remonstrance process applies and application petition is filed****

Day 1	Preliminary budget meeting
Day 2	Publish and mail notice of preliminary determination hearing
Day 12	Library Board meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 14	Publish and mail notice of preliminary determination to enter into Lease
Day 43	Petition for application of petition and remonstrance process is filed with County Auditor

Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting application of petition and remonstrance process
Day 60	Publish notice of applicability of petition and remonstrance process
Day 89	Voter Registration Office/Auditor issues petition and remonstrance forms
Day 90	Beginning of petition and remonstrance circulation
Day 120	End of petition and remonstrance period -- file petitions and remonstrances with Voter Registration Office/County Auditor
Day 135	Voter Registration Office/Auditor certifies taxpaying/voter signatures on petitions and remonstrances to Board of Trustees
Day 136	Form Building Corporation
Day 137	Board of Trustees meeting to receive Auditor's certificate with the taxpayers petition and remonstrances; if petitioners have greater number, approve form of Lease and formation of Building Corporation
Day 137	Building Corporation meeting to approve form of lease
Day 138	City/Town Council or County Council meeting to approve borrowing
Day 139	Publish notice of hearing on Lease
Day 169	Board of Trustees meeting to hold hearing on Lease; Execute Lease
Day 173	Publish Notice of Execution of Lease
Day 200	Board of Trustees meeting to approve construction documents
Day 205	Publish notice of construction bids (<i>first publication</i>)
Day 212	Publish notice of construction bids (<i>second publication</i>)
Day 252	Receive construction bids
Day 253	Complete appraisal proceedings for sale of real estate
Day 259	Board of Trustees meeting to award construction bids and assign bids to Building Corporation
Day 261	Building Corporation meeting to approve borrowing and Trust Indenture, to deem Official Statement nearly final and accept assignment of construction bids
Day 262	Publish bond sale notice (<i>first publication</i>)
Day 269	Publish bond sale notice (<i>second publication</i>)
Day 277	Bond Sale
Day 291	Closing
Day 292	Commence Construction

J. Library Lease Financing Proposed Timetable – Referendum

****If referendum applies and application petition is filed****

Day 1	Preliminary budget meeting
Day 2	Publish and mail notice of preliminary determination hearing
Day 12	Library Board meeting to hold preliminary determination hearing and adopt preliminary determination resolution
Day 14	Publish and mail notice of preliminary determination to enter into Lease
Day 43	Petition for application of referendum is filed with County Auditor
Day 58	Voter Registration Office/Auditor files certificate with Board of Trustees certifying petition requesting referendum
Day 65	Library files Certification of Voter Registration Office and letter requesting question be placed on ballot with County Auditor
Day 79	County Auditor certifies question to County Election Board
Day 109	County Election Board places question on ballot of next scheduled election, or if no scheduled election within next six months, special election scheduled. Special election to occur no sooner than 90 days nor later than 120 days after Auditor certifies the question
Day 200	Election
Day 207	Form Building Corporation
Day 207	Board of Trustees meeting to receive election results; if win approve form of Lease and formation of Building Corporation
Day 207	Building Corporation meeting to approve form of lease
Day 208	City/Town Council or County Council meeting to approve borrowing
Day 210	Publish notice of hearing on Lease
Day 237	Board of Trustees meeting to hold hearing on Lease; Execute Lease
Day 240	Publish Notice of Execution of Lease
Day 267	Board of Trustees meeting to approve construction documents
Day 270	Publish notice of construction bids (<i>first publication</i>)
Day 277	Publish notice of construction bids (<i>second publication</i>)
Day 300	Receive construction bids
Day 300	Complete appraisal proceedings for sale of real estate
Day 307	Board of Trustees meeting to award construction bids and assign bids to Building Corporation
Day 307	Building Corporation meeting to approve borrowing and Trust Indenture, to deem Official Statement nearly final and accept assignment of construction bids

Day 307	Publish bond sale notice (first publication)
Day 314	Publish bond sale notice (second publication)
Day 321	Bond Sale
Day 335	Closing
Day 336	Commence Construction

K. The Role of the Building Corporation

Under the Indiana Constitution a municipal corporation, such as a library, has a debt limitation of two percent of the net assessed valuation of property within the district. A building corporation is formed during a lease financing to assist the library in constructing and financing a project which it could not do alone because of this limitation. In this way the building corporation acts as a conduit. It is important to stress to the members of the building corporation that their role is to assist the library with its building project.

From the building corporation's perspective, there are three major phases to a building project. During the first phase, the members of the building corporation will meet and organize, approve the form of the lease and approve the plans and specifications for the building developed by the architect selected by the library. The library will also approve the plans and specifications and the form of the lease and after a notice period, hold a hearing on the lease.

The second phase is the financing part of the project. The building corporation will meet and approve the issuance of bonds to finance the project, the trust indenture and the official statement. The official statement is a document describing the building corporation, the library and the project and is used by the underwriter to market the bonds. During this phase, the bonds are sold and a closing occurs. At the closing, a transcript of the proceedings of the library and the building corporation with closing certificates is assembled. The bonds are delivered to the underwriter in exchange for payment.

The third phase of the project is the construction of the project. During this phase, the architect and construction manager, if applicable, will typically present contractor invoices for payment to the Board of Library Trustees, who will approve such payment. The invoices are then submitted to the building corporation for approval. The invoices will be attached to an affidavit for payment signed by two officers of the building corporation for approval. The invoices will be attached to an affidavit for payment signed by two officers of the building corporation or its designated representative and submitted to and paid by the trustee out of bond proceeds.

The building corporation will also need to approve any change orders required during construction after such change orders have been recommended by the architect and

construction manager, if applicable, and approved by the Board of Library Trustees. The building corporation will need to hold annual meetings and make all necessary filings to continue its existence. Typically, the building corporation will continue to exist until the bonds are paid off, but it will not be active unless market conditions make a refunding economically feasible.

As with any other type of corporation, the members do not have individual liability for debts or obligations of the corporation. IC 23-17-13-1(d) further states that “(a) director is not liable for an action taken as a director, or failure to take such action, unless: . . . the breach or failure to perform constitutes willful misconduct or recklessness.”

During phase two, as described above, there is a possibility of liability under certain Security and Exchange Commission rules designed to prevent fraud in the sale of securities. The financial advisor, local counsel and bond counsel will assist the building corporation in avoiding such liability. The Board of Library Trustees and building corporation members can also assist in avoiding liability by reviewing the Official Statement for accuracy and completeness.

The members of the building corporation are an important part of any lease financing, and a library should appreciate the members’ dedication to helping build a better library for the community. It is, however, important to emphasize to members of the building corporation that this building project is the library’s project before, during and after the involvement of the building corporation. If that point is understood and accepted by members of the building corporation, there should be no opportunity for tension between the library and the building corporation.

L Bond Sale: Negotiated Versus Competitive

Bonds issued by a building corporation, in connection with a library lease financing pursuant to Indiana Code 36-1-10, may be issued using a competitive sale or by negotiating with an investment banker. Various factors should be considered in determining which type of sale is appropriate for a particular library’s transaction. The financial advisor, based on his or her experience, will be able to make a recommendation; however, the ultimate decision is with the library.

With a competitive sale, a bond sale notice is published establishing a date or range of dates on which the building corporation will receive bids on its bonds. Generally, the financial advisor will supply the potential underwriters with maturity dates and amounts, either with the notice or just prior to the sale. The financial advisor will generate this schedule of maturity dates and amounts based upon estimated interest rates. The underwriter’s bid will contain the interest rates for those maturity dates and amounts and the underwriter’s discount. At the time of the sale, the building corporation will receive bids and, after the financial advisor reviews the bids, award the bonds to the underwriter offering the lowest interest cost. Many financial advisors believe that the building corporation will receive the best interest rates on its bonds at a competitive sale on the date of the sale because the competition will require the

underwriters to offer the best interest rates possible on that day to win the bonds. Some libraries like competitive sales because it avoids the political problem of having to choose an underwriter.

With a negotiated sale, the library chooses an investment banker to underwrite the bonds. The library may use a financial advisor and an underwriter, if it desires, or it may use the investment banker as both financial advisor and underwriter. The underwriter will watch the bond market and choose a day to sell the bonds which it believes will generate the best interest rates. After the underwriter markets the bonds, the building corporation and the underwriter will execute a bond purchase contract, which locks in the interest rates.

Financial advisors may recommend to a library or a library may decide on its own, that a negotiated sale would have certain advantages in a particular transaction. The decision to use a negotiated sale is sometimes merely based on the personal preferences and prior experiences of the board of trustees involved. There are certain factors, however, that tend to suggest that a negotiated sale may be of some advantage.

If a bond issue is very large or if the interest rate markets are very volatile, it may be appropriate to negotiate the issue. With a large issue it becomes difficult for an individual underwriter to submit a bid and therefore the underwriter joins a syndicate of underwriters to submit one joint bid. If this happens, competition may be limited or eliminated because of the small number of bids received. Financial advisors seem to vary on what size of issue is too large to sell competitively.

There are times when a library is trying to control its debt service and tax rate and therefore a very deliberate amortization schedule is desired. For example, a library may have a new industry in its district that currently is receiving property tax abatement, but in ten years will embody a large portion of the library's tax base. The financing can be structured in a way using capital appreciation bonds that will allow the debt service to be minimized for the first ten years of the issue until the industry comes on line. Capital appreciation bonds can only be accomplished with a negotiated sale. It is also possible, where a library is paying off other obligations (such as general obligation bonds or leases) over time, to structure the financing to achieve a relatively flat tax rate. Certain tax rate structuring will be more efficient with a negotiated sale.

Another scenario in which negotiated sales become very attractive is when the library has a story to tell. For example, a few years ago a major industry in a particular school corporation announced its closure the day before the school corporation had advertised to receive competitive bids on its bonds. The school corporation talked with an investment banker and explained the community's plans for dealing with the closure. The investment banker, on a negotiated basis, was able to sell the bonds by explaining the events to its potential customer.

Sometimes it is important for a library to sell the bonds as quickly as possible. For example, construction bids may be on the verge of expiring and the library wants to give

notice to proceed as soon as possible. Often, negotiated sales can be accomplished more quickly because there is not the fifteen day advertisement requirement, as there is with a competitive sale.

The decision between a competitive bond sale and a negotiated bond sale is ultimately the library's decision. The financial advisor can provide the library with the various advantages and disadvantages for a particular transaction to assist in the decision.

M. New Circuit Breaker Law

In the simplest terms, the circuit breaker tax credit enacted in the Indiana General Assembly puts a percentage cap on property taxes for certain taxpayers beginning with taxes payable in 2008. The percentage amount of the cap is based on the type of property. The percentages will decrease each year (in other words the amount of the cap will decrease) which will increase the potential loss to the governmental entities who receive tax dollars from that taxpayer until 2010 at which time the following will apply:

- Residential Homesteads – 1% of gross assessed valuation of the property
- Rental property and Agriculture – 2% of gross assessed valuation of the property
- Business – 3% of gross assessed valuation of the property

Even though the circuit breaker tax caps effect will not be fully felt until 2010, it is already having an effect on governmental units and school districts. The impact of the circuit breaker credit could be minimal for some libraries, but for others in connection with borrowing it could result in downgrades of credit ratings and may prevent them from being able to sell bonds.

Each taxing unit's ability to generate income will be linked to others in the taxing district. Since circuit breaker losses are shared by all taxing entities in the district, if one entity issues bonds or increases its tax rates, it impacts the ability of other entities in the district to do the same.

N. In Conclusion

A library project (and related financing) does not have to be a painful experience. There will be anxious moments in every project, such as the minutes before construction bids are opened. There will also be times when it appears that the legal process takes forever to complete. But with proper planning, good and open communication and the assistance of qualified, experienced professionals, the process and the end result can be very rewarding.

Handouts in this chapter that can be found on websites:

Community Development Block Grant – www.in.gov/ocra/2375.htm

USDA Rural Development - www.rurdev.usda.gov/

USDA Rural Development-Housing Program - www.rurdev.usda.gov/rhs/

SUGGESTED STEPS FOR NEW OR REMODELED LIBRARY FACILITIES

This outline consists of the major steps to be considered in the planning and construction of new or remodeled library facilities. The various points are listed in the approximate sequence but need not be followed in this exact order. Since the decision concerning new or remodeled facilities is of prime importance, the points concerning this are listed in more detail than those of the remainder of the outline.

- I. Initial suggestion to build.
- II. Decision on suggestion to build.
 - _____A. Condition and adequacy of present facilities to meet present and future needs.
 - _____1. Is the space for shelving, seating, and the staff becoming crowded?
 - _____2. Is rearrangement needed?
 - _____3. Structure as a building.
 - _____a. Is it generally sound?
 - _____b. Is the foundation solid and dry?
 - _____c. Is the heating and ventilating system adequate?
 - _____d. What is the condition of the wiring and plumbing?
 - _____e. Are the floors solid and level and will they hold the necessary weight for books, etc.?
 - _____f. Is the roof in good condition and does it drain well?
 - _____g. Does the structure meet building codes?
 - _____B. Alternatives to a new building.
 - _____1. Check the possibility of renovating the old building (as in II, A above)
 - _____2. Determine the possibilities of placing an addition on the old building.
 - _____a. Irregular floors between structures.
 - _____b. Bearing walls at place where structures are joined.
 - _____3. Cost per square foot for renovation and an addition may equal the cost per square foot for a new building.
 - _____4. Non-assignable space in an old building may amount to as much as forty to fifty per cent.
 - _____5. Renovation and addition should provide sufficient space for future activities and functions (this is determined by IV, the study of the library's community, and VII, the written building program).

III. Designation of responsibilities for planning the building, and for conducting and supervising the various other activities in the construction.

- A. Definition of various owner responsibilities to be assigned to individuals or groups in library, library's administration or governing body, and library's community.
- _____ B. Identification of responsibilities assigned by law, regulation, policy, tradition, or other predetermination.
- _____ C. Recognition of the existence of any special responsibilities arising from specific building project (e.g., interests of a donor or joint ownership of a facility).
- _____ D. Assessment of capability in existing organization for discharging planning, executory, and supervisory responsibilities.
- _____ E. Determination of need for consultants.
- _____ F. Consideration of the employment of a clerk of the works.
- _____ G. Identification and representation of appropriate individuals and groups in planning activity.
- _____ H. Determination of the organizational form of planning activity.
- _____ I. Written specification of responsibilities of various persons involved (e.g., architect, legal counsel, consultants, construction contractors, representative designated by owner to accept and approve plans and construction, and groups of individuals with other responsibilities on behalf of the owner.)

IV. Study of library's community.

- _____ A. Characteristics of general population.
- _____ B. Projected changes in general population during the anticipated life of projected building as determined by owner.
- _____ C. Development plans for civil community.
- _____ D. General information about library's community.
- _____ E. Identification of present and future library needs of individuals and groups in community.
- _____ F. Other libraries and other recreational, cultural, informational, educational, and research activities and facilities in community.
- _____ G. Existing plans for area or regional library development.
- _____ H. Special library problems.
- _____ I. Observations and conclusions of any studies which may have been made about library or lack of library use in community.

V. Survey of the library.

- _____A. Assess the quantity and quality of the book and periodical collection.
- _____B. Assess the quantity and quality of audio-visual materials.
- _____C. Evaluate the services offered to decide what should be dropped, strengthened, or added.
- _____D. Study the library staff for an adequate number of people and duties to be performed by each person.

VI. Selection of architect, consultants, and others to be employed by owner.

- _____A. Identification of necessary characteristics of architect, consultants, and others (e.g., clerk of the works and legal counsel).
- _____B. Determination of method of selecting architect, consultants, and others.
- _____C. Verification of competency of architect, consultants, and others being considered for employment.
- _____D. Determination of basis for establishing fees and charges.
- _____E. Provision for Architectural, consultant, and other services in the event those selected are not able to fulfill commitments.
- _____F. Specification of architect who will design building if an architectural partnership or firm is employed.
- _____G. Execution of contracts between owner and architect, consultants, and others selected.

VII. Preparation for actual planning.

- _____A. Literature search and reading on library and other building architecture, layout, and equipment.
- _____B. Visits by planners to other libraries, appropriate other buildings, and library and non-library equipment displays.
- _____C. Correspondence with other libraries.
- _____D. Survey of governing body, administration, library staff, and library users for suggestions regarding facilities to be included in new library building.

VIII. Preparation of building program statement.

- _____A. Statement of library's history, organization, and policies.
- _____B. Statement of library's philosophy.
- _____C. Summary of the study of library's community.
- _____D. Outline of library and nonlibrary functions and activities to be included in building.
- _____E. Indication of amount of funds available for planning, site acquisition, and construction.
- _____F. Indication of aesthetic and general requirements of building (e.g.,

architectural style, if appropriate; entrance at grade; and application of standards of construction for use by physically handicapped).

- _____ G. Description of criteria for selecting site.
- _____ H. Reference to standards appropriate to owner's type of library and to library construction.
- _____ I. Indication of space requirements for each function and activity.
- _____ J. Indication of space and service relationships.
- _____ K. Complete list of features and equipment not included elsewhere (e.g., integrated works of art; display facilities; book returns; and provisions for heating, ventilating, and lighting) and their requirements.
- _____ L. Indication of provision for expansion.
- _____ M. Indication of the name of building.

IX. Development and execution of financing plan.

- _____ A. Identification and study of possible sources of finance.
- _____ B. Selection of source or combination of sources which will provide adequate funds at the least cost of financing and debt service.
- _____ C. Crediting value of present mechanical and other equipment which can be used in new building.
- _____ D. Estimating total funds available for planning, site acquisition and construction.
- _____ E. Planning and executing funding campaign.
- _____ F. Consulting with legal counsel regarding financing.
- _____ G. Accepting funds, accounting, auditing, and other activities of financing responsibility.

X. Survey, selection, and acquisition of site.

- _____ A. Survey or mapping of prospective sites showing key data.
- _____ B. Location with respect to residence, movement of members of library's community, and traffic patterns in community.
- _____ C. Accessibility by foot and conveyed traffic, both private and public.
- _____ D. Visual prominence sites would give to building.
- _____ E. Geology and geography (grade, size, shape, orientation, soil and ground conditions, drainage, and natural hazards, such as flooding and landslides).
- _____ F. Zoning, requirements of master plan, or building restrictions.
- _____ G. Availability and convenience of utilities required.
- _____ H. Relationship to location of activities allied with or related to library.
- _____ I. Neighborhood (e.g., sounds and smells, civic attitudes, personal safety, and fire and other hazards).
- _____ J. Public relations aspects.
- _____ K. Advice and assistance of legal counsel.

- _____ L. Fairness of price.
- _____ M. Existence of clear title and possession of deed.

XI. Development and execution of publicity campaign.

- _____ A. Determination of objectives.
- _____ B. Coordination with library's general public relations program.
- _____ C. Establishment of publicity schedule, publicity budget allocations, and assignment of publicity responsibilities.
- _____ D. Selection and preparation of individuals, offices, groups, and media which will be used.
- _____ E. Preparation of plan to handle negative situations (e.g., strikes, accidents, and differences of opinion over site).

XII. Preparation and approval of schematic designs.

- _____ A. Preparation of proposed floor layouts by architect.
- _____ B. Submission of a statement of probable costs of construction by architect or by cost estimator.
- _____ C. Inspection, comparison with program requirements, and evaluation by governing body, administration, and planning team.
- _____ D. Revision of schematic design by architect.
- _____ E. Approval of schematic design by owner's designated representative.

XIII. Determination of built-in and other equipment requiring special consideration in construction.

- _____ A. Identification of those built-in and other items which will require special consideration.
- _____ B. Assurance that architect understands any items with which he may not be familiar.
- _____ C. Preparation of specifications by architect.
- _____ D. Identification of prospective suppliers and estimation of costs by architect or by cost estimator.

XIV. Preparation and approval of preliminary drawings and outline specifications.

- _____ A. Preparation by the architect of detailed drawings, elevations, and other drawings.
- _____ B. Preparation by architect of outline specifications for materials; type of structure; and mechanical, electrical, and other systems.
- _____ C. Submission by the architect or cost estimator of a revised statement of

- _____ D. Inspection, comparison with program requirements, and evaluation by governing body, administration, and planning team.
 - _____ E. Revision by architect of preliminary drawings and outline specifications.
 - _____ F. Approval by owner's designated representative of preliminary drawings and outline specifications.
- XV. Preparation and approval of working drawings and detailed specifications.
- _____ A. Preparation by architect of working drawings, including detail drawings of architectural, structural, and mechanical work, and from which specifications for bids are prepared.
 - _____ B. Inspection, comparison with program requirements, and evaluation by governing body, administration, and planning team.
 - _____ C. Revision by architect of working drawings.
 - _____ D. Preparation by architect of detailed specifications.
 - _____ E. Submission by the architect or cost estimator of revised statement of probable costs of construction.
 - _____ F. Acceptance in writing by owner's designated representative of final drawings, incorporating indicated changes or modifications, and of specifications.
 - _____ G. Preparation of construction documents.
- XVI. Selection and specification writing for movable furniture and equipment.
- _____ A. Compilation by planning team of list giving name and quantity of all movable furniture and equipment to be purchased.
 - _____ B. Writing of specifications for movable furniture and equipment by architect, librarian, or consultant.
- XVII. Preparation of contract documents, and advertisement and receipt of bids.
- _____ A. Identification of purchases of construction, mechanical equipment, and built-in and movable furniture and equipment to be made by bid and those to be made by negotiated purchase.
 - _____ B. Preparation of bid documents.
 - _____ C. Consultation with library's legal counsel on purchase requirements, bid documents, and bid forms and procedures.
 - _____ D. Negotiation of purchase of those items not subject to purchase by bid.
 - _____ E. Determining schedule and time and place of bid opening.
 - _____ F. Advertising invitation to bid.
 - _____ G. Receiving bids.

_____H. Disqualification of bids not received in accordance with invitation specifications.

XVIII. Planning ground-breaking ceremony.

XIX. Award of contracts or confirmation of purchase, signing of contracts, and establishment of construction and delivery schedules.

_____A. Opening bids.

_____B. Reviewing bids for compliance with bid procedure and for compliance with specifications.

_____C. Comparing prices, conditions of delivery, and other details.

_____D. Investigating performance record of contractors submitting bids.

_____E. Awarding and signing contracts and confirming negotiated purchases.

_____F. Reviewing contracts and negotiated purchases for legal compliances.

_____G. Determining tentative construction delivery, and other schedules not specified in contracts.

XX. Conducting in-construction activities.

_____A. Holding ground-breaking ceremonies.

_____B. Continually inspecting work to assure that the construction agrees with the working drawings and specifications.

_____C. Providing delivery access to site, unloading areas, and storage facilities for supplies, materials, and equipment which must be held before use.

_____D. Handling change orders.

_____E. Providing for working temperature in cold weather.

_____F. Providing security from pilferage, vandalism, personal injury, and property damage for property during construction.

_____G. Inspection and certifying work completed and for payment to contractors.

_____H. Receiving and inspecting equipment and furniture delivered to owner.

_____I. Paying architect, consultants, vendors, contractors, and others according to schedules as construction is completed and as equipment and supplies are delivered and accepted.

_____J. Preparing list of significant errors, omissions, defects, and deficiencies to be corrected by contractor before owner's final payment.

XXI. Planning for post-construction activities and procedures.

_____A. Determining increased staff requirements, and recruiting and training additional staff.

_____B. Determining and arranging for the provision of new library materials

required to be available on the opening of new building as a result of new or reorganized services.

- _____ C. Developing new and revised rules and regulations necessitated by the move into new building and planning for publication of revised rules and regulations.
- _____ D. Planning for the provision of increased funds which may be required for added staff, service contracts for new equipment, etc. required by new building.
- _____ E. Planning movement of materials, equipment, and furniture from old to new building.

XXII. Final inspection and acceptance of the new building.

- _____ A. Final inspection of building by architect, contractor, and representative of the owner.
- _____ B. Preparation of list of unsatisfactory and incomplete work.
- _____ C. Correction or errors and completion of the work by the contractor.
- _____ D. Acceptance of building and final payments made to the architect, contractors, and others to whom payments are due.

XXIII. Movement to new building.

XXIV. Post-acceptance activities.

- _____ A. Shakedown period for building, equipment, and staff, after acceptance and before opening to the public.
- _____ B. Publication and distribution of guides, new policies, rules, and regulations for new building.
- _____ C. Detection and solution of construction problems not noted before acceptance of building.

For the most recent data on Indiana Public Library Facilities and Construction Status see Table 13

2010 Indiana Public Library Statistics at www.in.gov/library/4300.htm