



**Exploration of Financing Alternatives for Future Capital Project Construction Workshop,
Certificates of Participation History, Usage, and Requirements Minutes
Tuesday, August 2, 2005 – 5:00 p.m.
School Board Meeting Room
Stuart, FL 34994**

Deleted: pf

Members Present

Susan Hershey –Chair
Lorie Shekailo-Vice-Chair
Dr. David Anderson
Laurie Gaylord
Nancy Kline
Dr. Sara A. Wilcox, Superintendent
Tom Elfers, School Board Attorney

Members Absent

Nancy Kline
Kristin Conrad, Student Representative (JBHS)

Staff Present

Dr. Frank Raffone, J. Lisle Bozeman, Ruth Pietruszewski, Darla Miloszewski, Rodger Osborne, Cathleen Brennan

Public

Robert Nabors, John Stokes

Press PBPPost – Mike Bender

Stuart News – Kelly Tyko

MCEA – No representation

AFSCME – No representation

Call to order by the Chairman and Pledge of Allegiance to the Flag of the United States

1. Open to the Public

- No representation

2. Experience in Certificates of Participation Financing

Bob Nabors, Nabors, Giblin & Nickerson, introduced himself and John Stokes, his partner. The firm had sent a presentation paper which gave the legal background of lease purchase and Certificates of Participation and talked about the structure. Bob Nabors gave the legal background and provided an analysis of the Florida case law upholding the issuance by school districts of Certificates of Participation (COP) and lease purchase financings without elector approval by referendum under the Florida Constitution. COPs have now become the most utilized structure for financing educational facilities in Florida. No referendum is required and strong credit protection is provided for investors resulting in lower interest costs. He explained that a COP means an investor buys a certificate of participation in a lease obligation, which the District enters into with a corporation that you form or the School Board as an entity. The key from a Constitutional standpoint is that the School District remains the power on an annual basis to decide whether or not to appropriate the next lease purchase payment. The court says that that decision of appropriation is the budgetary discretion of the School Board, so it is not a future pledge of property taxes; therefore, no referendum is required. John Stokes explained the structure and credit issues. He reviewed locally issued debt obligations. He informed Board members that general obligation bonds are bonds that are taken to the public. They require a referendum, a public hearing to the Board, and approval of the list by the Florida Department of Education. It is then taken to the citizens. If the citizens approve, the millage goes on the tax role outside of the 10 mill limitation. Taxes are raised to pay the additional debt. Tax anticipation notes and revenue anticipation notes are primarily used for items like school buses. They have a 5-year limit. After COPS, the biggest source of capital in the State for School Districts is the infrastructure sales tax. It is levied by counties and shared with Districts, called a community investment tax. The School District

2. Experience in Certificates of Participation Financing (Con't)

receives the first 25% of the tax, and a ½ cent sales tax. A referendum is required for the sales tax, which can be levied for up to 30 years. These alternative sources are for capital purchases, not operating costs. COPs are lease purchase transactions. They are subject to annual appropriation. They are long-term debt. The primary source of payment is capital improvement millage. In Martin County the capital improvement millage generated \$26 million. The use of COPS is governed by the use of capital outlay millage; whatever you can use the capital outlay millage for you can use the COPs for. Right now there is approximately \$8 ½ billion of outstanding COP debt in the state. John Stokes remarked that Martin County School District is unique to be in such a great financial position. The statutes say that no more than 75% of capital outlay millage revenues may be used to make lease-purchase payments on leases entered into pursuant to Section 1013.13, Florida Statutes. The credit markets will limit a district to 1 mill of the 2 mills. He stated that MCSD could use \$13 million per year of the existing capital outlay millage dollars to service a Certificate of Participation program. At today's rates he gave the following amounts that could be generated and put into a construction fund:

- | | | |
|--------------------|--------|---------------|
| ➤ 10 year maturity | 1 mill | \$107 million |
| ➤ 15 year maturity | 1 mill | \$144 million |
| ➤ 20 year maturity | 1 mill | \$167 million |

He then described how the COP program worked. He explained that it worked just like other debt instruments. The Board will lease purchase these products and sell securities based on this lease agreement. The District would enter into a lease agreement with another entity, such as FSBA. The Board will lease their property to this entity. The Board will lease their own property back from the entity using the proceeds of the COPs. The real obligation is the lease, not the securities sold out in the market. The lease is subject to annual appropriation, so there is a covenant that the Superintendent will provide a tentative budget each year that will contain a specific line item of the basic lease payments due in that fiscal year. It is up to the Board to approve or take affirmative action to remove that line item. If the line item is removed from the budget, the school or schools must be vacated. At that point, whoever is insuring the bonds, the certificate holders, have the right to come in and use that facility for the remainder of the lease term. At the end of the term you would get it back. Infrastructure sales tax can be used for payment under a COP program. Sales tax is more volatile than property taxes. They fluctuate. The COP can be structured as a traditional long-term obligation, with a call protection period, which means the District would not be able to pre-pay them in the first seven years. If the District would access the variable rate market that fluctuates, the COPs could be called at any time. A master lease is set-up and a master trust indenture. The stakeholders include the entity that is being leased to and from, the trustee, and the School Board. The trustee is the administrator. One option would be that the Board would create a single Educational purpose corporation whose sole members would be the members of the Board. FSBA has been doing this program for years. He suggested that before the Board embarked on any capital obligation program that the Board hire a financial advisor. Board members asked several questions. John Stokes stated, "This is a District with no debt with a huge tax base, and it would behoove you to not only get bond insurance to get ratings....Your ratings would be extremely high, double A or better. Those underlying ratings help bring down the cost of your insurance, and of all the costs involved in the transaction, the bond insurance is the most significant number." He stated that a financial advisor is priceless, because they put together your rating agency presentations. They know all the people in the market, and they can guide you through the process. He felt that an advisor would suggest a competitive process for an underwriter. Bond council is the entity that represents the School Board directly. The Bond Council is responsible for putting the whole legal structure of the COP program in place. The underwriter goes out and markets your bonds with your disclosure document. Sue Hershey asked if the funds could be used for land purchases. John Stokes answered yes. Sue Hershey asked if the District was approved for an elementary school purchase. Dr. Sara A. Wilcox said she thought the District was qualified for three elementary school purchases. John Stokes stated that the limitation on the COPs was the same limitation as the capital outlay millage. The capital outlay millage statute says that you can use it to pay lease purchase payments under a lease purchase program, if it is an FDOE survey approved project. Lorie Shekailo asked if a COP could be done on a project that had been contracted out, but not built yet. Federal tax law, called the "great pyramid rule," says that anything can be refinanced that is financed within 60 days of the Board taking official action, plus preliminary costs. Official action comes in the form of a resolution, which Nabors, Giblin & Nickerson can prepare for the District. The resolution is an expression of intent. It doesn't mean you must do it. It is a safety net to preserve the right to reimburse yourself. Once the resolution is in place, any capital expenditures of 60 days prior to the date and everyone after that up to a three year period can be refinanced with tax exempt debt at any time. If the project wasn't financed, the District may reimburse itself, and up to 20% of the issues can be used to pay preliminary expenditures, which are defined as architectural, surveying, appraisals, engineering, not site work, movement of dirt, or purchase of land. John Stokes advised that Martin County School Board adopt a resolution as soon as possible. Board members agreed that they should adopt a resolution for a safety net. Lorie Shekailo wanted to make it clear that the resolution

2. Experience in Certificates of Participation Financing (Con't)

was to reserve the right to do a COP, not suggest that the Board had decided to do it. She wanted to make sure the public did not receive the wrong impression. John Stokes informed Board members that the only information he needed to prepare the resolution was the "not to exceed number." Board members discussed what date they could adopt the resolution. Board members agreed that the best time would be August 12th and it would be included with the contracts. Dr. David Anderson asked Rodger Osborne if he had experience with COPs. Rodger answered no. Dr. Sara A. Wilcox informed Board members that Darla Miloszewski, Executive Director of Finance, had a lot of experience from Monroe County. Lorie Shekailo asked to have another capital plan workshop to review the capital plan. A capital plan workshop was scheduled for August 23rd at 7:00 p.m. in the School Board meeting room.

3. Open to the Board

Board members decided to do Open to the Board at the 7:00 p.m. meeting tonight.

There being no further business to bring before the Board, the meeting was adjourned at 6:40 p.m.

CHAIR (Sue Hershey)

SECRETARY (Sara A. Wilcox, Ph.D.)