



Legislation Text

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Clerk 07/25/2011

A MOTION of the county council approving the sale of the county's Limited Tax General Obligation Refunding Bonds, 2011, in the aggregate principal amount of \$25,700,000 and the terms and conditions thereof, as set forth in a bond purchase contract therefor, approving and authorizing the execution of such bond purchase contract, and establishing the plan of refunding, all in accordance with Ordinance 15780.

WHEREAS, pursuant to Ordinance 15780 (the "Bond Ordinance"), the county council authorized the issuance of one or more series of its limited tax general obligation refunding bonds in an outstanding aggregate principal amount not to exceed \$75,000,000 to refund all or a portion of the county's Limited Tax General Obligation and Refunding Bonds (Various Purpose), 1993 Series B, Limited Tax General Obligation and Refunding Bonds (Various Purpose), 1996 Series A, Limited Tax General Obligation Bonds (Various Purpose), 2001, Limited Tax General Obligation Bonds (Various Purpose), 2002, Limited Tax General Obligation Bonds, 2003, Series A and Limited Tax General Obligation and Refunding Bonds, 2003, Series B, and

WHEREAS, the Bond Ordinance provided that such bonds may be publicly sold in one or more series, any of which may be sold in a combined offering with other bonds of the county, either by negotiated sale or by competitive bid, as determined by the Finance Director in consultation with the county's financial advisors, and

WHEREAS, the Finance Director has determined that a series of the bonds authorized pursuant to the Bond Ordinance, to be designated as the county's Limited Tax General Obligation Refunding Bonds, 2011 (the "Bonds") be sold by negotiated sale as provided herein, and

WHEREAS, \$43,060,000 of the bonds authorized by the Bond Ordinance are currently outstanding. The aggregate principal amount of all such bonds (including the Bonds) to be outstanding on the date of issuance of the Bonds, computed as provided in the Bond Ordinance, will be \$68,760,000, which amount does not exceed \$75,000,000, and

WHEREAS, pursuant to the Bond Ordinance, the Finance Director has negotiated the sale of the Bonds to Citigroup Global Markets Inc. (the "Underwriter"), and a preliminary official statement dated July 15, 2011, has been prepared for the public sale of the Bonds, and

WHEREAS, it is in the best interest of the county that the Bonds be sold to the Underwriter in a negotiated sale on the terms set forth in the attached bond purchase contract, the Bond Ordinance and this motion;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. Definitions. Except as expressly authorized herein, terms used in this motion have the meanings set forth in the Bond Ordinance.

B. Approval of Sale of Bonds and Purchase Contract. The issuance and sale to the Underwriter of the Bonds, designated as the county's Limited Tax General Obligation Refunding Bonds, 2011, in the aggregate principal amount of \$25,700,000, and the other terms and conditions thereof as set forth in the bond purchase contract attached hereto as Attachment A (the "Purchase Contract"), are hereby ratified and confirmed; and the Purchase Contract is hereby approved. The Bonds shall be dated, shall mature on the dates in each of the years and in the principal amounts, shall bear interest at the rates and payable on the dates, and shall be subject to redemption prior to maturity in the amounts, in the manner and at the prices as set forth in the Purchase Contract. In all other respects, the Bonds shall conform to the terms and conditions specified in the Purchase Contract and the Bond Ordinance, which terms are hereby ratified and confirmed. The Finance Director is authorized to execute the Purchase Contract on behalf of the county.

C. Application of Bond Proceeds; Refunding of Refunded Bonds.

1. Application of Bond Proceeds. All of the net proceeds of the Bonds shall be applied to: (a) the refunding of (i) \$3,115,000 of the county's Limited Tax General Obligation Bonds (Various Purpose), 2002 maturing on December 1, 2013 (the "Refunded 2002 Bonds"), by providing for the payment of the interest on those Refunded 2002 Bonds that will become due and payable on or before December 1, 2012 (the "Refunded 2002 Bond Redemption Date"), and the redemption price of the Refunded 2002 Bonds that will be called for redemption on the Refunded 2002 Bond Redemption Date; (ii) \$17,110,000 of the county's Limited Tax General Obligation Bonds, 2003, Series A maturing on June 1 in the years 2014 through 2023, inclusive (the "Refunded 2003A Bonds"), by providing for the payment of the interest on those Refunded 2003A Bonds that will become due and payable on or before December 1, 2013 (the "Refunded 2003A Bond Redemption Date"), and the redemption price of the Refunded 2003A Bonds that will be called for redemption on the Refunded 2003A Bond Redemption Date; and (iii) \$5,240,000 of the county's Limited Tax General Obligation and Refunding Bonds, 2003, Series B maturing on June 1 in the years 2014 through 2023, inclusive (the "Refunded 2003B Bonds" and, together with the Refunded 2002 Bonds and the Refunded 2003A Bonds, the "Refunded Bonds"), by providing for the payment of the interest on those Refunded 2003B Bonds that will become due and payable on or before December 1, 2013 (the "Refunded 2003B Bond Redemption Date"), and the redemption price of the Refunded 2003B Bonds that will be called for redemption on the Refunded 2003B Bond Redemption Date; and (b) the payment of the costs and expenses incurred in issuing the Bonds.

2. Plan of Refunding. The proper county officials are authorized to carry out the refunding plan in accordance with Section 11 of the Bond Ordinance. The amounts, maturities and redemption dates of the Refunded Bonds shall be as identified in Attachment B to this motion. The amounts, maturities and interest rates of the Government Obligations to be purchased to accomplish the refunding of the Refunded Bonds shall be as identified in Attachment C to this motion.

3. Escrow Trustee. The selection of U.S. Bank National Association as Escrow Trustee for the refunding of the Refunded Bonds is hereby ratified and confirmed.

4. Finding of Savings and Defeasance. The county council finds and determines that a substantial savings will be effected by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refunded Bonds but for such refunding, and that such Government Obligations to be deposited with the Escrow Trustee and the income therefrom, together with any necessary beginning cash balance, are sufficient to defease and redeem the Refunded Bonds and will discharge and satisfy the obligations of the county with respect to the Refunded Bonds under the ordinances pursuant to which the Refunded Bonds were issued, and the pledges of the county in such ordinances. Immediately upon delivery of such Government Obligations to the Escrow Trustee and the deposit of any necessary beginning cash balance, the Refunded Bonds shall be deemed not to be outstanding under the ordinances pursuant to which they were issued and shall cease to be entitled to any lien, benefit or security under such ordinances except the right to receive payment from such Government Obligations and beginning cash balance so set aside and pledged.

D. Undertaking to Provide Ongoing Disclosure.

1. Contract/Undertaking. This section D. constitutes the county's written undertaking for the benefit of the owners and beneficial owners of the Bonds as required by section (b)(5) of rule 15c2-12 (the "rule") of the Securities and Exchange Commission (the "Commission").

2. Financial Statements/Operating Data. The county agrees to provide or cause to be provided to the Municipal Securities Rulemaking Board (the "MSRB") the following annual financial information and operating data for the prior fiscal year (commencing in 2012 for the fiscal year ended December 31, 2011):

(a) annual financial statements prepared in accordance with the Budget Accounting and Reporting System ("BARS") prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statutes) and generally of the type attached to the official statement as "Appendix B," which statements will not be audited, except that if and when audited financial statements are otherwise prepared and available to the county they will be provided;

- (b) a summary of the assessed value of taxable property in the county;
- (c) a summary of budgeted General Fund revenues and appropriations;
- (d) a summary of *ad valorem* property tax levy rates per \$1,000 of assessed value and delinquency rates;
- (e) a summary of outstanding tax-supported indebtedness of the county; and
- (f) a schedule of the aggregate annual debt service on tax-supported indebtedness of the county.

Items (b) through (f) shall be required only to the extent that such information is not included in the annual financial statements.

Such annual information and operating data described above shall be provided on or before the end of seven months after the end of the county's fiscal year. The county's fiscal year currently ends on December 31. The county may adjust such fiscal year by providing written notice of the change of fiscal year to the MSRB. In lieu of providing such annual financial information and operating data, the county may make specific cross-reference to other documents available to the public on the MSRB's internet web site or filed with the Commission.

If not provided as part of the annual financial information discussed above, the county shall provide to the MSRB the county's audited annual financial statements prepared in accordance with BARS when and if available.

3. Specified Events. The county agrees to provide or cause to be provided, in a timely manner not in excess of ten business days after the occurrence of the event, to the MSRB, notice of the occurrence of any of the following specified events with respect to the Bonds:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on credit enhancements reflecting financial difficulties;

(e) substitution of credit or liquidity providers, or their failure to perform;

(f) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

(g) modifications to rights of Bondholders, if material;

(h) Bond calls, if material, and tender offers;

(i) defeasances;

(j) release, substitution or sale of property securing repayment of the Bonds, if material;

(k) rating changes;

(l) bankruptcy, insolvency, receivership, or similar event of the county;

(m) the consummation of a merger, consolidation or acquisition involving the county or the sale of all or substantially all of the assets of the county, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and

(n) appointment of a successor or additional trustee or the change of name of a trustee, if material.

Solely for purposes of disclosure, and not intending to modify this undertaking, the county advises with reference to items (c), (j) and (n) above that no debt service reserves secure payment of the Bonds, no property secures repayment of the Bonds, and there is no trustee for the Bonds.

4. Notification Upon Failure to Provide Financial Data. The county agrees to provide or cause to be provided, in a timely manner, to the MSRB, notice of its failure to provide the annual financial information described in subsection 2 above on or prior to the date set forth in subsection 2 above.

5. Electronic Format; Identifying Information. The county agrees that all documents provided to the MSRB pursuant to this section D. shall be provided in an electronic format and accompanied by such

identifying information, each as prescribed by the MSRB.

6. Termination/Modification. The county's obligations to provide annual financial information and notices of specified events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. This section D., or any provision hereof, shall be null and void if the county (i) obtains an opinion of nationally recognized bond counsel to the effect that those portions of the rule which require this section D., or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies the MSRB of such opinion and the cancellation of this section D.

Notwithstanding any other provision of this motion, the county may amend this section D., and any provision of this section D. may be waived, with an approving opinion of nationally recognized bond counsel and in accordance with the rule.

In the event of any amendment or waiver of a provision of this section D., the county shall describe such amendment in the next annual report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the county. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a specified event under subsection 3, and (ii) the annual report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

7. Bond Owners' Remedies Under This Section D. The right of any Bond owner or beneficial owner of Bonds to enforce the provisions of this section D. shall be limited to a right to obtain specific enforcement of the county's obligations hereunder, and any failure by the county to comply with the provisions of this undertaking shall not be an event of default with respect to the Bonds. For purposes of this section D., "beneficial owner" means any person who has the power, directly or indirectly, to vote or consent with respect

to, or to dispose of ownership of, any Bonds, including persons holding Bonds through nominees or depositories.

E. Further Authority. The proper county officials, their agents, and representatives are hereby authorized and directed to do everything necessary for the prompt issuance and delivery of the Bonds, for the preparation, execution and delivery of the final official statement for the sale of the Bonds, and for the proper use and application of the proceeds of such sale.

F. Severability. The covenants contained in this motion shall constitute a contract between the county and the owners of each and every Bond. If any one or more of the covenants or agreements provided in this motion to be performed on the part of the county shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this motion and shall in no way affect the validity of the other provisions of this motion or of the Bonds.