

# Bond Elections 101 Arizona Municipal Clerks Association July 2018 Training

Presented by:



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## Introductions and Scope of Presentation

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## Why Do We Need an Election?

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Bond elections are the foundation that bond counsel relies upon to issue an unqualified opinion that the bonds have been duly and validly issued.

Budget Law = the law applicable to all political subdivisions that prohibits expenditures for purposes not included in the budget and prohibits incurring any debt, obligation or liability in excess of the amount specified in the budget. "Pay as you go."

To avoid the budget law, express statutory authority is required.

Debt = any financial obligation that extends beyond the current fiscal year.

Budget law context vs. Debt limit context vs. Bond context

- Payable only from ad valorem taxes?
- Voter approved
- Unsecured promise to pay *without* annual appropriation is a debt



## Why Do We Need an Election (cont'd)

### Debt Limitations (AZ Constitution)

Article 7, Section 13 – Questions upon bond issues or special assessments shall be submitted to the vote of real property tax payers...

- Bonds secured by ad valorem taxes OR monies from a fund containing ad valorem tax receipts
- Article 7, Section 13 governs approval of a bond debt, but also the bonds' purpose
- Article 9, Section 8 – no political subdivision shall become *indebted in any manner* to an amount exceeding 6% of the taxable property in such political subdivision without the assent of the majority of the property taxpayers
  - Incorporated cities and towns, with voter approval, may become indebted to a larger amount not exceeding 20% additional, for water, light, sewers, open space and parks, public safety, and streets and transportation

## Why Do We Need an Election (cont'd)

### Debt Limitations (Statutory)

Title 42, Chapter 17, Article 3 – budget law requires political subdivisions to “pay as you go” for each fiscal year unless expressly authorized by statute or case law to enter into a financial obligation that extends beyond the fiscal year

Examples: bonds; lawful long-term obligations; tort judgments; expenses fixed by law; special fund pledge



## Why Do We Need an Election (cont'd)

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### Types of Debt

#### What is a bond?

An interest bearing certificate issued by a government or corporation to pay a sum of money on a date that extends beyond a budget year.

- Often secured by a pledge of collateral:
  - Ad valorem taxes
  - Revenue stream (utility rate payers)
  - Facilities



#### Alternatives to bonds:

- Obligations – usually an undivided interest in a trust that holds a payment agreement
- Certificates of Participation – usually an undivided interest in a lease, lease-purchase agreement or purchase agreement

### **Bonds are a form of debt**

## Do initiative and referendum requirements apply? (ARS Title 19, Chapter 1, Article 4)

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### ARS 19-141

"This chapter applies to the legislation of cities, towns and counties, except as specifically provided to the contrary in this article"

#### Bonds are legislation

- ***Wennerstrom v. City of Mesa, 169 Ariz. 485, 491, 821 P.2d 146, 152 (1991)***
  - "The voters of Mesa acted in a legislative capacity when they declared a public purpose (road improvement and construction) and provided the ways and means for its accomplishment (the bond revenues)."

#### BUT – Bond elections are not referenda

- ***Clay v. Town of Gilbert - 160 Ariz. 335, 773 P.2d 233 (Ct. App. 1989)***
  - Bonds that require voter approval are not referred to voters; they are statutorily required. Therefore, bond election is not a referendum
  - "We conclude that the trial court erred in holding that the election was a "referendum" election and that a publicity pamphlet was required."
    - Pamphlet now explicitly required, just not through Title 19.

## Types of Debt Financing – Election Required

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- **General Obligation Bonds**
  - Purpose: Any lawful purpose
- **Utility Revenue Bonds**
  - Purpose: Acquiring, constructing or improving "utility undertaking"
- **Street and Highway Revenue User Fund (HURF Revenue Bonds)**
  - Purpose: Improving, constructing or maintaining City streets and highways; Acquisition of necessary rights of way



## Types of Debt and Source of Repayment that Require an Election

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### General Obligation Bonds

#### Characteristics

"Full faith and credit" bonds; Secured by unlimited ad valorem property tax pledge

Debt service can be paid from property taxes or enterprise revenues, e.g. water and sewer system revenues, highway user revenues

Debt service and expenditure of bond proceeds are not included in expenditure limitation

Subject to voter authorization

Order of the election by the political subdivision governing body (i.e. City Council) or petition signed by 15% of the qualified electors

Transaction costs may come from authorized amount, but bond election expenses to be paid from current operating funds only

Notice of election per A.R.S. 9-812 and 39-204 (not publication)

Election held at the regular voting places on the first Tuesday following the first Monday in November

Voter Information Pamphlet is required

Ballot form must include certain language – for example, "the issuance of these bonds will result in a property tax increase..."

Authorization does not expire

Pursuant to Arizona Constitution, principal outstanding may not exceed:

20% of net secondary assessed value for water, sewer, lighting, parks, open spaces, recreational purposes, public safety, law enforcement, fire and emergency facilities and streets and transportation facilities and an additional 6% of net secondary assessed value for all other purposes.

## Types of Debt and Source of Repayment that Require an Election

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### Utility Revenue Bonds

#### Legal Purpose(s)

Acquiring, constructing or improving "utility undertaking"; Utility undertakings include water, sewer, gas, electric light or power, and garbage disposal systems; airport buildings and facilities

#### Characteristics

Not a general or "full faith and credit" obligation of City

Secured by revenues of the applicable utility undertaking

Debt service paid from above revenues; Debt service and expenditure of bond proceeds are not included in expenditure limitation

Certain categories of expenditures are not subject to voter authorization

Bond election related to utility acquisition – 9% interest rate limit (A.R.S. 9-511 & 9-512)

General utility bond election ordered by the governing body (A.R.S. 9-522 et seq.)

Order and call for election must be published (A.R.S. 9-524)

No voter information pamphlet unless tax secured

Ballot language – "for the bonds/ against the bonds"

Authorization does not expire

Prior year's net revenues must exceed maximum annual debt service by a specific factor

#### Most Common Types of Projects Financed

Water and sewer projects

Airport projects

## Types of Debt and Source of Repayment that Require an Election

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### Street and Highway Revenue User Fund (HURF Revenue Bonds)

#### Legal Purposes(s)

Improving, constructing or maintaining City streets and highways; Acquisition of necessary rights of way

#### Characteristics

Not a general or "full faith and credit" obligation of City

Secured by City's receipts of state-shared gas taxes and other highway user fees and charges

Debt service paid from above receipts

Debt service and expenditure of bond proceeds are not included in expenditure limitation

Subject to voter authorization

Secured by highway user revenues and gas taxes

Governing body adopts a resolution calling an election

Election resolution must be published

No voter information pamphlet requirement

But political subdivision may pledge its full faith and credit like a GO bond

"For the bond"/ "against the bonds" on the ballot

Coverage test (A.R.S. 48-689) – no bonds issued unless 1.5 times the highest annual P&I payments and "A" credit rating

Authorization does not expire

## Types of Debt and Source of Repayment that DO NOT Require an Election

- **Excise Tax Revenue Bonds**
  - Purpose: Any lawful purpose
  - May be secured by a pledge of specific revenues (e.g., excise taxes, enterprise revenues, etc.) or by annual appropriations
- **Housing Development Bonds**
  - Purpose: Housing development projects
  - Not general obligation or general debt of municipality; payable only from revenues of housing development
- **Lease and Lease Purchase Financings**
- **Improvement Districts**
- **Community Facility Districts**
- **Industrial Development Authority Bond Issues**
- **Other**

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## Types of Debt and Source of Repayment that DO NOT Require an Election

### **Excise Tax Bonds**

#### **Legal Purpose(s)**

Any lawful or necessary purposes

#### **Characteristics**

May be secured by a pledge of specific revenues (e.g., excise taxes, enterprise revenues, etc.) or by annual appropriations

Debt service and expenditure of bond proceeds are not included in expenditure limitation

City receives ownership of project when debt is retired

If rated, generally one category below general obligation rating

May be used for short-term (equipment) or long-term (real property) projects

Requires approval by both the MPC Board and the City Council

#### **Limitations**

No legal limitations

Limited by general creditworthiness of City and existing debt burden

May be limited by existing legal documents if security is a pledge of revenue

#### **Types of City Projects Financed**

General projects for municipal buildings and improvements on land owned by the City

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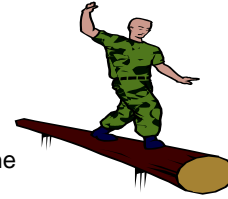
## Preparing the Ballot Questions

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Scope of Questions - the law prohibits “log rolling.” Typically, there is no log rolling if there is a common nexus among the items presented and the law has not divided the issues in other contexts.

### Purposes vs. Projects

- Must be broad enough in scope to cover all expenditures expected to be made
- Need enough specificity so the voter can't claim “fraud in the inducement”
- Examples, construct vs. improve; expand vs. renovate; equipment; financial costs; lease and acquire



### Dollar sizing

- Construction estimate
- Inflation
- Incidentals

Amount authorized may exceed the current debt capacity

## Call for Election

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The following must be included in the call for election (A.R.S. 35-455)

- Aggregate amount of bonds
- Maximum interest rate
- Minimum and maximum number of years bonds may run
- Purpose of bonds
- Current outstanding GO debt
- Current constitutional debt limitation



## Voter Information Pamphlet

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### Statutory Requirements of Voter Informational Pamphlet (“VIP”).

- A.R.S. Section 35-454 requires that the purposes be listed in the VIP and limits the use of bond proceeds to the purposes stated. The purposes set out in the VIP may be different than the language in the ballot.
- Unless treated as a “contract with the voters,” the VIP must not be so inaccurate to constitute fraud in the inducement.
- 2013 Cave Creek U.S.D. case held the specific pamphlet and ballot purposes were not allowed to be changed.

## Voter Information Pamphlet (cont'd)

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### Requirements.

A.R.S. 35-454. Not less than 35 days before the election, mail to every household with a registered voter.

- *Sherman v. Tempe* – before the election means before early voting begins.



## Voter Information Pamphlet (cont'd)

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### Substantive Content Requirements

- Amount of Bonds
- Maximum Interest Rate
- Estimated Debt Service Schedule for Current Outstanding Bonds
- Estimated Debt Service Schedule for Proposed Bonds
  - Limits on assessed value growth assumptions
- Source of repayment
- Estimated issuance costs
- Estimated tax impact on certain types of properties
  - Residential (\$250,000)
  - Commercial (\$1,000,000)
  - Agricultural/Vacant (\$100,000)
- Estimated total cost (including P&I) – **bold** font
- Current outstanding GO debt and Constitutional limitation
- Projects and expenditures for which the bonds are to be issued
- Polling location for the addressee
- Hours during which polls will be open
- Pro/con arguments

## Voter Information Pamphlet – Pro/Con Arguments

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### Regarding the Pro/Con Arguments:

- Governing body must set deadlines to submit at a public meeting.
- Publish deadline (doesn't say how to publish, so use the standard found in A.R.S. 39-204).
- Governing Body's argument should be approved by the governing body (AG Opinion I08-005).
- Political subdivision may charge a fee for arguments if it has some statutory authority to do so (initiative statutes).
  - **New requirement:** Clerk required to provide for electronic submittal of deposit payments for arguments (A.R.S. 19-124(E)).

## Voter Information Pamphlet – Other Requirements

Gratuitous additions in the VIP, such as “Purpose” or “Why this Election was called” must be carefully reviewed.

Within 30 days after election, submit copy of the VIP to the Department of Revenue.

All written voter information must state the tax rate necessary to support the bonds (A.R.S. 35-454.C.)



## Voting Rights Act

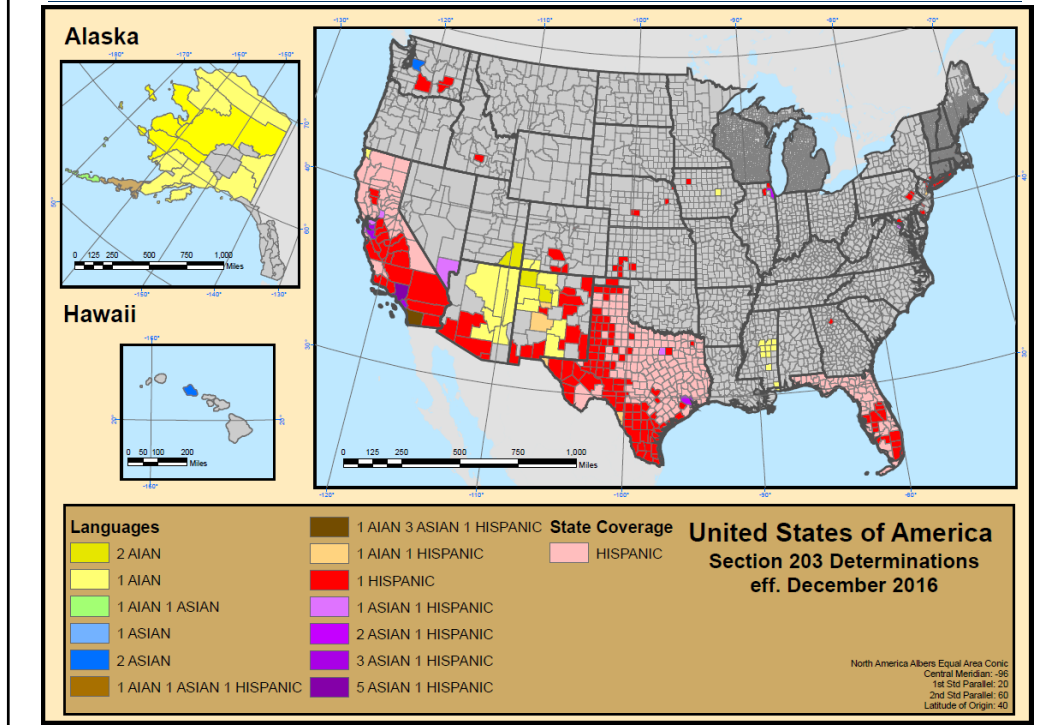
Shelby County v. Holder (133 S. Ct. 2612 (2013))– U.S. Supreme Court, June 25, 2013, the Voting Rights Act coverage formula is unconstitutional. Preclearance is no longer required.

### Language Minority Requirements

- Voting Rights Act requires that certain jurisdictions provide election materials in both English and minority language.
- Section 4(f)(4) – Required all Arizona jurisdictions to provide materials in English and Spanish.
  - Overruled by Shelby County v. Holder
- Section 203 – Requires jurisdictions to provide minority language materials based on census data



## Voting Rights Act – Section 203 Coverage



### Government Resources Influencing the Outcome of an Election

Objective test, not based on the subjective state of mind of the actor.

- The prohibition applies before a measure qualifies for the ballot.
- The legal test is
  - (1) Whether use of public resources has purpose of supporting or opposing measure, and
  - (2) Whether use of public resources involves dissemination of information in a manner that is not impartial or neutral
- Impartial, content neutral information has been allowed, but the courts will look to the style, tenor and timing of the activity.
  - (1) Free of advocacy
  - (2) Free of misleading tendencies
  - (3) Free of partisan coloring



### Government Resources Influencing the Outcome of an Election (cont'd)

Normal non-partisan “get out to vote or register” activities are permitted.

- 2000 and 2004 Attorney General Opinion allows the answering of frequently asked questions and an analysis of the financial impact of the ballot measure.
- Can't have pictures of town's police cars, etc. - in 'vote yes' campaign material.
- A check mark can get you in trouble.

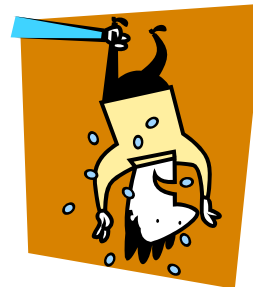
Proposition 400



### Government Resources Influencing the Outcome of an Election (cont'd)

State and federal prosecution possible if government funds are used.

Federal case - wire fraud theft is a result of using program funds from a program receiving federal funds.



## Bond Committees

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### Pre-Calling of the Bond Election.

- If appointed by the political subdivision then all their activities are subject to the same laws as the political subdivision Council appointed.
  - E.g. Open Meetings Laws



### Post-Calling of the Bond Election.

Formally disband any Bond Committee.

- Justice Department will link to the political subdivision.

Political Action Committees must operate independent of the political subdivision.

## Notices

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Different types of elections require different notices.

Form of notice should be approved in resolution calling election.

Remember:

## Notices

Election Type	Notice Type	What	When	Where	Frequency	Statut. Ref.
<b>General Obligation Bonds</b>	Publication	Request for Arguments	Prior to argument deadline	Newspaper of General Circulation	Weekly: 1x weekly for 2 consecutive weeks Daily: 4x consecutive	ARS 35-454(A)(2); ARS 39-204
<b>Utility Revenue Bonds</b>	Publication	Order and Call of Election	15 to 30 days before election	Newspaper of General Circulation	At least once	ARS 9-524
<b>Utilities Revenue Bonds</b>	Posting (If newspaper unavailable)	Order and Call of Election	15 to 30 days before election	Five conspicuous places in municipality		ARS 9-524
<b>Mail Ballot Election</b>	Publication	Call of election	90 days before election	Newspaper of General Circulation	1x weekly for 2 weeks	ARS 16-227 (16-409 & 558)

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## Overall Bond Election Timeline

Countdown to November 6, 2018.....

Most governmental jurisdictions will want to give themselves anywhere from six to nine months to call the election and work through the process

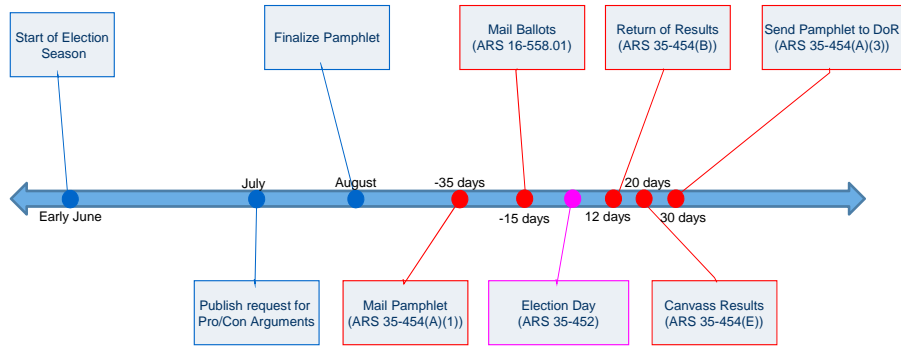
Involves coordination with multiple internal and external parties to work through the process, most notably the Voter Information Pamphlet (VIP)

Requires working with other governmental agencies (i.e. county elections) to finalize everything in a timely manner

Don't wait until it's too late.....

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### Overall Bond Election Timeline



### Conclusion and Questions



**THANK YOU FOR  
YOUR  
ATTENTION.  
QUESTION?**

