



# County Technical Assistance Service

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## Debt Management Policy

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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# Debt Management Policy

Reference Number: CTAS-1799

## Legal Requirements:

"Pursuant to TCA Section 9-21-151(b)(1), the State Funding Board is authorized to develop model financial transaction policies for the State, State Agencies, local governments and local government instrumentalities. The State Funding Board on December 15, 2010, adopted a **statement on debt management** that reflects three principles for strong financial management in the public sector:

1. Understand the transaction
2. Explain to citizens what is being considered
3. Avoid conflicts of interest
4. Disclose costs and risks

State and local governments and government entities that borrow money are directed to draft their own debt management policies by January 1, 2012, using this model policy as a guideline."<sup>[1]</sup>

## Objectives:

The following objectives meet the minimum statutory requirements:

1. Make the decision process transparent
2. Address hiring outside professionals
3. Address any potential conflict of interest issues

## Minimum Language Required

### 1. Transparency

The Entity shall comply with legal requirements for notice and for public meetings related to debt issuance. In the interest of transparency, all costs (including interest, issuance, continuing, and one-time) shall be disclosed to the citizens/members, governing body, and other stakeholders in a timely manner. *(The method for disclosure of costs and other information, including documentation of compliance with the policy, shall be developed and outlined in the policy.)*

### 2. Professionals

- a. The Entity shall require all professionals engaged in the process of issuing debt to clearly disclose all compensation and consideration received related to services provided in the debt issuance process by both the Entity and the lender or conduit issuer, if any. This includes "soft" costs or compensations in lieu of direct payments.
- b. Counsel: The Entity shall enter into an engagement letter agreement with each lawyer or law firm representing the Entity in a debt transaction. *(No engagement letter is required for any lawyer who is an employee of the Entity or lawyer or law firm which is under a general appointment or contract to serve as counsel to the Entity. The Entity does not need an engagement letter with counsel not representing the Entity, such as underwriters' counsel.)*
- c. Financial Advisor: If the Entity chooses to hire financial advisors, the Entity shall enter into a written agreement with each person or firm serving as financial advisor for debt management and transactions.
- d. Whether in a competitive or negotiated sale, the financial advisor shall not be permitted to bid on, privately place or underwrite an issue for which they are or have been providing advisory services for the issuance.
- e. Underwriter: If there is an underwriter, the Entity shall require the underwriter to clearly identify itself in writing (e.g., in a response to a request for proposals or in promotional materials provided to an issuer) as an underwriter and not as a financial advisor from the earliest stages of its relationship with the Entity with respect to that issue. The underwriter must clarify its primary role as a purchaser of securities in an arm's-length commercial transaction and that it has financial and other interests that differ from those of the Entity. The underwriter in a publicly offered, negotiated sale shall be required to provide pricing information both as to interest rates and to takedown per maturity to the governing body *(or its designated official)* in advance of the pricing of the debt.

### 3. Conflicts

- a. Professionals involved in a debt transaction hired or compensated by the Entity shall be required to disclose to the Entity existing client and business relationships between and among the professionals to a transaction (including but not limited to financial advisor, swap advisor, bond counsel, swap counsel, trustee, paying agent, underwriter, counterparty, and remarketing agent), as well as conduit issuers,

sponsoring organizations and program administrators. This disclosure shall include that information reasonably sufficient to allow the Entity to appreciate the significance of the relationships.

- b. Professionals who become involved in the debt transaction as a result of a bid submitted in a widely and publicly advertised competitive sale conducted using an industry standard, electronic bidding platform are not subject to this disclosure. No disclosure is required that would violate any rule or regulation of professional conduct.

**A county may adopt the minimum language as their debt policy.**

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[1] <https://www.comptroller.tn.gov/sl/pdf/DebtPolicy.pdf>

### **Additional Considerations to the Minimum Language**

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**Source URL:** <http://ctas-eli.ctas.tennessee.edu/reference/debt-management-policy>

