



VIEW*S*&VISIONS

A publication of Bowles Rice LLP

Spring 2018



Something Old, Something New: Financing Tools in the Economic Development Toolkit

Roger D. Hunter, Thompson R. Percy
and J. Berkeley Bentley
Bowles Rice LLP

Roger D. Hunter (left) is an attorney in the Charleston office of Bowles Rice. With nearly four decades of experience, his primary practice areas include public finance and municipal bonds, securities and SEC matters, mergers and acquisitions, corporate finance, and general corporate and business law.

Hunter is a leader of the firm's Tax Increment Financing (TIF) and Municipal Bonds and Public Finance Teams. His work in municipal bonds and public finance cover a variety of transactions and projects, ranging from large general obligation bond issues for public works to

conduit borrowings for private corporate borrowers, and has included lease purchase financings, "appropriation" bonds and moral obligation bonds, revenue bonds, refundings and refinancing transactions, economic development financings, public offerings, private placements and limited offerings, and both taxable and tax-exempt bonds.

He earned his law degree from Yale Law School and his undergraduate, *summa cum laude*, from West Virginia University. Hunter is Chairman of the Investor's Committee of the West Virginia Investment Management Board.

Thompson R. Percy (center) is an attorney in the Charleston office of Bowles Rice who focuses his practice in commercial and financial law, and has significant experience in public finance and municipal bonds, mergers and acquisitions, corporate governance, commercial lending, private offerings, contract negotiation, creditors' rights issues and securities regulation and compliance matters.

A member of the firm's Municipal Bonds and Public Finance Team, Percy has advised and represented

state entities, municipalities, school boards, county commissions and other public bodies with respect to a wide variety of issues related to public financings and municipal bonds. Additionally, Percy is a member of the firm's TIF Team that has served as bond counsel and trustee's counsel in various projects throughout West Virginia.

Percy earned his law degree and undergraduate degree from West Virginia University. He is a member of the National Association of Bond Lawyers.

J. Berkeley Bentley (right) is an attorney in the Charleston office of Bowles Rice who assists and advises clients in public finance and municipal bond matters, commercial and corporate transactional matters (startup counseling, securities offerings, capital raises and other corporate finance matters, mergers, acquisitions and sales of assets) and matters involving creditors' rights and bankruptcy proceedings.

As a member of both the TIF and Municipal Bonds and Public Finance Teams, he has assisted on revenue bond and revenue refunding bond

transactions, general obligation bond financings, lease purchase financings, qualified zone academy bonds, excess levy projects and economic development transactions. Bentley has drafted and negotiated key bond documents, authorized resolutions and appeared before governmental entities and boards when the firm has served as Bond Counsel.

Bentley received both his law degree and Executive MBA from West Virginia University, where he served as an Executive Editor for the West Virginia Law Review.

Over the last four decades, Bowles Rice's public finance and economic development lawyers have worked hand in hand with the private sector and state and local economic development officials to help bring and grow a wide variety of new manufacturing, commercial, infrastructure and healthcare projects to all parts of West Virginia – from the Northern Panhandle to southern West Virginia, and from the Eastern Panhandle to the Ohio River Valley in the west. Our teams use a wide range of financing tools in the economic development "toolkit" to help bring new facilities and, ultimately, jobs to West Virginia. We enjoy nothing more than finding the right tools, and overcoming challenges and obstacles, in order to make a new project a success for the long-term good of our state and our communities.

Over the years, the challenges have evolved, and so have the tools in our toolkit. This article briefly describes just a few of those tools and how they might be used around the state to grow local economies and provide and protect more local jobs. Today, our toolkit includes "tax increment financing," "broadband co-operatives" and various tax credits that incentivize investment by facilitating the financing of economic development projects. The newer techniques are very helpful, but some of the oldest tools in the economic development toolkit that the Bowles Rice team has been using effectively for decades remain very effective. These include lease purchase financing arrangements using bonds and other types of revenue bonds (both taxable and tax-exempt bonds) for manufacturing plants, commercial projects, health care facilities and basic infrastructure.

The more recent additions to our toolkit include tax increment financing (which leverages the expected growth in property taxes generated by new development to finance infrastructure projects within a physical "TIF District"), sales tax increment financing (which leverages expected new sales taxes

generated within a designated “STIF District” to finance infrastructure and other projects) and tourism tax credits (which are geared toward tourism projects and do not require the designation of a specific district, and thus, which can be more project-focused). Because of the unique requirements of these tools (for example, the sale of bonds associated with a TIF District would likely require investments of several million dollars, and the minimum investment for a STIF District is \$75 million), whether and how to use them will require you to have a good sense of the scope and goals of your project.

Another tool recently created by the West Virginia Legislature that has the potential to have a huge impact on entrepreneurship, employment, health and so many other facets of the state’s economy is the recent (2017) House Bill 3093, the “Broadband Bill,” codified in Chapter 31G, Article 2. That bill provided for the creation of broadband co-operatives (groups of people or communities who may come together for this purpose), to finance projects geared toward bringing broadband service into communities without that

access. With the assistance of the state’s Broadband Enhancement Council, people and communities that establish such cooperatives may be able to utilize grants, loans, subscription payments, tax credits and, in some cases, tax-exempt bond issues to get the money they need to provide broadband level service, giving their communities a chance to fight for remote-work centers, internet-based jobs, enhanced educational opportunities, telemedicine and other benefits that flow from a solid, dependable and fast internet connection. Bowles Rice sees this area as vital to future economic growth and development, and has dedicated a team of lawyers from multiple disciplines to assist with broadband initiatives and projects, as well as related financing.

On the other hand, older tools, such as lease financing techniques using bonds, are just as useful today as they were in the early 1980s and have played key roles in bringing hundreds of millions of dollars of new manufacturing plants to West Virginia. Lease purchase financing deals can be structured in a variety of ways, but they often involve federally taxable

lease revenue bonds that are issued by a governmental entity (such as the West Virginia Economic Development Authority or a county or municipal building commission) to finance the acquisition and construction of a facility. A private sector business, in turn, leases the facility from the governmental entity and makes rental payments sufficient to pay the annual debt service on the bonds. At the end of the lease, there is usually an option giving the private sector firm the right to acquire title to the facility at the end of the lease, or earlier, by paying off all the bonds. Because the governmental entity’s ownership of the facility is exempt from *ad valorem* property taxes, lease purchase financings often involve a payment-in-lieu-of-taxes or like arrangement, which provides some marginal increase in revenues to the local tax levying bodies but provides significant tax savings for the private firm that will operate the facility under the lease.¹

Revenue bonds, including industrial and commercial development revenue bonds, are another traditional tool that the Bowles Rice public finance team continues to use in a wide variety of economic development efforts, including infrastructure projects. Over the years, the U.S. Congress has restricted the types of projects for which federally tax-exempt revenue bonds can be issued for the benefit of private sector projects. Fortunately, the federal tax reform in 2017 ultimately left intact the ability to issue tax-exempt bonds for certain types of projects and bond issues that constitute qualified “Private Activity Bonds,” which had been targeted for elimination earlier in congressional consideration of federal tax reform.

One example of qualified Private Activity Bonds that remains viable, subject to satisfying applicable conditions, is the so-called qualified “501(c)(3) bonds.” These are bonds issued for projects owned and/or operated by and for the benefit of tax-exempt private 501(c)(3) corporations

Continued on p. 54





Economic Diversification Through Software Development

Amanda Laucher
(continued from p. 43)

Diversifying the style of training and locations of the offerings allows more individuals to take part and is a more scalable approach to quickly creating tech hubs.

Attracting the Work

To have a significant economic impact on a region, a new industry must bring money in rather than just redistribute cash from within the area. We have found success in doing this in two different ways.

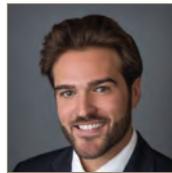
First, by offering quality software development services at a lower cost than firms in major cities, we have been able to attract clients from across the country, including New York, Chicago, Atlanta, Seattle and San Francisco. Development dollars that would have stayed in the cities or migrated

abroad are now flowing into Appalachia, enabling us to create well-paying and sustainable career opportunities. The amount of work that is available is already huge, and we are restricted by the rate that we can hire talented developers. As the region becomes known as a hub for tech, we anticipate the demand for services will only increase.

We are also able to help bring money to the region by working with local companies and entrepreneurs. Custom software was often out of reach for these organizations and individuals due to cost, so by offering affordable services they are able to take advantage of technology solutions and become more competitive on a regional and global level.

The Future

The introduction of tech hubs across Appalachia certainly has the potential of increasing economic success in the region, but it is just one piece of what is required for economic diversification. To be successful, the region must grow many different industries, and a tight connection with the rest of the country is essential for this to happen. ∇



Something Old, Something New: Financing Tools in the Economic Development Toolkit

Roger D. Hunter, Thompson R. Percy & J. Berkeley Bentley
(continued from p. 45)

(a sector that includes many health care providers). Such bonds will be, in our view, important tools in battling the opioid addiction crisis, which is a major priority in the U.S., generally, and an absolutely critical one for West Virginia. The recent federal tax overhaul left in place the ability to do tax-exempt qualified “501(c)(3) bonds,” and we believe that these bonds could play an important role in financing much-needed addiction treatment facilities, operated by tax-exempt 501(c)(3) organizations.

There are also options for financing through various state agencies, again, depending upon the type of project needed in the community. The Water Development Authority, for example, serves as a revenue bond bank that seeks to provide needed financing for certain economic infrastructure to protect and improve public health and to encourage economic growth. We have worked with municipalities and local public

service districts to obtain financing, including federal funding sources and tax-exempt bonds, for their much-needed local projects to expand or improve service to the public they serve.

West Virginia’s leadership has done a great job focusing on and investing in programs that incentivize economic development, including the recent Roads to Prosperity highway building program and the related general obligation bonds approved by voters in October 2017, which will bring significant positive economic impacts in the short term as well as the long term. Our team is experienced in using any and all of the tools in the financing toolkit that can help make our client’s plans or goals a reality. And while this article has only presented a few of the many and varied financing tools we use today, we’re always looking for new and creative ways to make the difference between just a great idea and a project that gets fully funded and off the ground.

Bowles Rice attorneys and strategists have often been at the forefront of the legislation creating these tools, are poised to facilitate the implementation of economic development programs and regularly help clients navigate the complexities of finding the right financing options for projects that contribute to the economic development of our great Mountain State. Whatever will work best for you and your community, whether something old or something new – or a mixture of both – we look forward to helping take your economic development projects from concept to reality! ∇

¹Business and economic development leaders continue to push for a constitutional amendment that would eliminate *ad valorem* property taxes on manufacturing machinery, equipment and inventory. The latest such push was House Joint Resolution 106, which, at the time of this writing, looks as though it will not be adopted in the 2018 Regular Session of the West Virginia Legislature. Thus, we expect lease purchase financings to continue to be a vital tool for the foreseeable future.