



County of Lackawanna

Lackawanna County
Administration Building
200 Adams Avenue
Scranton, Pennsylvania
18503

Certified Copy

Ordinance: 10-0059

File Number: 10-0059

Ordinance #202
Second Reading
GENERAL OBLIGATION NOTE, SERIES A OF 2010

Ordinance #202

First Reading: March 10, 2010

Second Reading: March 24, 2010

ORDINANCE #202
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF LACKAWANNA, PENNSYLVANIA

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF LACKAWANNA, PENNSYLVANIA, SETTING FORTH ITS INTENT TO ISSUE A FEDERALLY TAXABLE GENERAL OBLIGATION NOTE, SERIES A OF 2010, OF THE COUNTY IN THE AGGREGATE PRINCIPAL AMOUNT OF THREE MILLION THREE HUNDRED NINETEEN THOUSAND DOLLARS (\$3,319,000) PURSUANT TO THE ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA, 53 Pa.C.S. Chapters 80-82, as amended, reenacted and supplemented, KNOWN AS THE LOCAL GOVERNMENT UNIT DEBT ACT (THE "ACT"); FINDING THAT A PRIVATE SALE BY NEGOTIATION IS IN THE BEST FINANCIAL INTERESTS OF THE COUNTY; DETERMINING THAT SUCH 2010 NOTE SHALL EVIDENCE NONELECTORAL DEBT OF THE COUNTY; SPECIFYING THAT SUCH INDEBTEDNESS IS TO BE INCURRED TO PROVIDE FUNDS TO FINANCE A PROJECT OF THE COUNTY WHICH CONSISTS OF: (1) CURRENTLY REFUNDING THE COUNTY'S OUTSTANDING TAXABLE GENERAL OBLIGATION BONDS, SERIES B OF 1999; AND (2) PAYING THE COSTS AND EXPENSES OF ISSUING THE 2010 NOTE; SETTING FORTH THE REASONABLE ESTIMATED USEFUL LIVES OF THE CAPITAL PROJECTS TO BE REFINANCED BY THE 2010 NOTE; ACCEPTING A PROPOSAL FOR THE PURCHASE OF SUCH 2010 NOTE AT PRIVATE SALE BY NEGOTIATION; PROVIDING THAT SUCH 2010 NOTE, WHEN ISSUED, SHALL CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY; FIXING THE DENOMINATION, DATED DATE, INTEREST PAYMENT DATES, INTEREST RATES,

REDEMPTION PROVISIONS AND PLACE OF PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SUCH 2010 NOTE; AUTHORIZING SPECIFIED OFFICERS OF THE COUNTY TO CONTRACT WITH THE PAYING AGENT FOR ITS SERVICES IN CONNECTION WITH THE 2010 NOTE; SETTING FORTH THE SUBSTANTIAL FORM OF THE 2010 NOTE EVIDENCING THE DEBT; AUTHORIZING EXECUTION AND ATTESTATION OF SUCH 2010 NOTE; PROVIDING COVENANTS RELATED TO DEBT SERVICE APPLICABLE TO SUCH 2010 NOTE TO THE EXTENT REQUIRED BY THE ACT AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE COUNTY IN SUPPORT THEREOF; CREATING A SINKING FUND IN CONNECTION WITH SUCH 2010 NOTE, TO THE EXTENT REQUIRED BY THE ACT; DESIGNATING THE PAYING AGENT TO BE THE SINKING FUND DEPOSITARY; PROVIDING A COVENANT TO INSURE PROMPT AND FULL PAYMENT FOR SUCH 2010 NOTE WHEN DUE; SETTING FORTH REGISTRATION AND TRANSFER PROVISIONS WITH RESPECT TO SUCH 2010 NOTE; AUTHORIZING THE EXECUTION OF ONE OR MORE INVESTMENT AGREEMENTS BY SPECIFIED OFFICERS OF THE COUNTY (IF APPLICABLE) AND THE PURCHASE OF CERTAIN U.S. TREASURY OBLIGATIONS OR ANY OTHER SECURITIES OR INVESTMENTS IN CONNECTION WITH THE PROJECT AND THE REFUNDING OF THE COUNTY'S OUTSTANDING TAXABLE GENERAL OBLIGATION BONDS, SERIES B OF 1999; AUTHORIZING AND DIRECTING SPECIFIED OFFICERS OF THE COUNTY TO DO, TO TAKE AND TO PERFORM CERTAIN SPECIFIED, REQUIRED, NECESSARY OR APPROPRIATE ACTS TO EFFECT THE ISSUANCE OF THE 2010 NOTE, INCLUDING, WITHOUT LIMITATION, THE PREPARATION OF A DEBT STATEMENT AND BORROWING BASE CERTIFICATE, AND THE FILING OF SPECIFIED DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, ALL AS REQUIRED BY THE ACT; DECLARING THAT THE DEBT TO BE EVIDENCED BY SUCH 2010 NOTE, TOGETHER WITH ALL OTHER INDEBTEDNESS OF THE COUNTY, WILL NOT BE IN EXCESS OF ANY APPLICABLE LIMITATION IMPOSED BY THE ACT; AUTHORIZING PROPER OFFICERS OF THE COUNTY TO DELIVER THE 2010 NOTE UPON THE APPROVAL OF THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; AUTHORIZING AND DIRECTING THE PREPARATION, EXECUTION AND DELIVERY OF ALL OTHER REQUIRED DOCUMENTS AND THE TAKING OF ALL OTHER REQUIRED ACTION; PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INsofar AS THE SAME SHALL BE INCONSISTENT HERewith.

WHEREAS, the County of Lackawanna, Pennsylvania (the "County"), is a home rule charter county operating under the Home Rule Charter and Optional Plans Law of the Commonwealth of Pennsylvania (the "Commonwealth"); and

WHEREAS, the County has heretofore issued its \$5,225,000 original aggregate principal amount Taxable General Obligation Bonds, Series B of 1999 (the "1999 Bonds"); and

WHEREAS, the County has determined to provide funds for a project (the "Project") consisting of the following: (1) currently refunding the 1999 Bonds; and (2) paying the costs and expenses of

issuing the 2010 Note (hereinafter defined); and

WHEREAS, the County desires to authorize the current refunding of the 1999 Bonds for the purpose of substituting notes for bonds; and

WHEREAS, the 2010 Note which is, in part, being issued to currently refund the 1999 Bonds will not be outstanding through a maturity date that could not have been included in the issue of the 1999 Bonds; and

WHEREAS, it is necessary that the indebtedness of the County be increased for the purpose of funding the Project; and

WHEREAS, the proposed increase of debt, together with its nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause the limitations of the County, pursuant to constitutional and statutory authority, to be exceeded; and

WHEREAS, the County received a commitment letter for the financing of the Project (the "Commitment Letter") from _____, _____, Pennsylvania (the "Purchaser"); and

WHEREAS, the County desires to formally approve the Project, to accept the Commitment Letter and to authorize the incurrence of nonelectoral debt under the Local Government Unit Debt Act of the Commonwealth, 53 Pa. C.S., Chapters 80-82, as amended and supplemented (the "Act") and the execution and delivery of the Commitment Letter.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners (the "Board") of the County of Lackawanna, Pennsylvania, and it is hereby enacted by the Board as follows:

SECTION 1. The principal amount of the Federally Taxable General Obligation Note, Series A of 2010 (the "2010 Note") of the County proposed to be issued pursuant to this Ordinance and the Act, is \$3,319,000. The 2010 Note shall be issued for the purpose of financing the Project and shall be incurred as nonelectoral debt of the County.

SECTION 2. The County hereby approves the Project to be undertaken consisting of providing funds for (1) currently refunding the 1999 Bonds, and (2) paying the costs and expenses of issuing the 2010 Note.

The County hereby finds and certifies that realistic cost estimates have been obtained for the costs of the Project from financial analysts, registered architects, professional engineers or other persons qualified by experience to provide such estimates.

It is hereby determined and declared that the remaining realistic estimated useful lives of the capital projects originally financed by the 1999 Bonds which are to be refinanced by a portion of the

proceeds of the 2010 Note are at least 20 years. It is hereby certified that a principal amount of the 2010 Note at least equal to the realistic estimated cost of each such capital project shall mature prior to the end of the useful life of such project. Stated installments or maturities of principal of the 2010 Note will not be deferred beyond the later of one year after the estimated date for the completion of the construction portion of the Project, if any, or two years from the date of issuance of the 2010 Note.

In connection with the issuance and sale of the 2010 Note, the Board, as required by the provisions of the Act, hereby finds, determines and states (a) that the purpose of the current refunding of the 1999 Bonds is to substitute notes for bonds; and (b) that the current refunding of the 1999 Bonds is authorized and permitted under and pursuant to the provisions of Section 8241 of the Act. The Board further finds and determines that the final maturity date of the 2010 Note issued to effect the current refunding of the 1999 Bonds does not extend to a date that could not have been included in the 1999 Bonds issue.

The Board hereby authorizes and directs its Chairman or any other Commissioner of the County, the Chief of Staff, the Assistant Chief of Staff, the Treasurer or any other proper officer of the County to execute all documents and take all actions necessary in connection with accomplishing the current refunding of the 1999 Bonds, including, but not limited to providing notice to Penn Security Bank and Trust Company, Scranton, Pennsylvania, as paying agent for the 1999 Bonds, to refund the 1999 Bonds on or about _____, 2010, or such earlier or later date selected by the Chairman of the Board. In accordance with Section 8246 of the Act, it is the intent of the Board that the 1999 Bonds shall no longer be outstanding from and after the date of the issuance of the 2010 Note.

SECTION 3. Said indebtedness shall be evidenced by one federally taxable general obligation note in the principal amount of \$3,319,000, dated and bearing interest from the earliest date of possible issue of the 2010 Note under the statutory time requirements as set forth in the Act, at a [fixed] rate of interest specified in the Commitment Letter, payable on the unpaid balance of the 2010 Note during the term of the 2010 Note. Interest is payable on the unpaid balance of the 2010 Note during its term until paid. The 2010 Note shall mature in installments of principal and at the [fixed] rate of interest as shown on the attached schedule hereinafter referred to as "Exhibit A."

The County reserves the right to anticipate any or all installments of principal or any payment of interest at any time prior to the respective payment dates thereof, in accordance with the limitations as specified in the Commitment Letter, if any.

The principal and interest of the 2010 Note shall be payable at the office of the sinking fund depositary selected for the 2010 Note as hereinafter provided.

SECTION 4. The 2010 Note is hereby declared to be a general obligation of the County. The County hereby covenants that it shall include the amount of debt service on the 2010 Note for each fiscal year in which such sums are payable in its budget for that year; shall appropriate such amounts from its general revenues for the payment of such debt service; and shall duly and punctually pay or cause to be paid from its general revenues the principal of the 2010 Note and the

interest thereon at the dates and places and in the manner stated in the 2010 Note according to the true intent and meaning thereof, and for such proper budgeting, appropriation, and payment, the full faith, credit and taxing power of the County are hereby irrevocably pledged.

The amounts which the County hereby covenants to pay in each of the fiscal years that the 2010 Note is outstanding on the basis of the interest rate as specified in the Commitment Letter are shown on Exhibit A hereto.

SECTION 5. The 2010 Note, when issued, will be a general obligation of the County.

SECTION 6. The form of the 2010 Note shall be substantially as shown on the attached "Exhibit B".

SECTION 7. The 2010 Note shall be executed in the name and under the corporate seal of the County by the Chairman of the Board or any other Commissioner of the County and attested to by the Chief of Staff or Assistant Chief of Staff of the County in substantially the form attached hereto together with such changes, modifications, insertions and deletions as such officers, with the advice of counsel, deem necessary and appropriate; their execution and delivery thereof shall be conclusive evidence of the approval and authorization by the County of the final terms of the 2010 Note. The Chief of Staff, Assistant Chief of Staff or Treasurer of the County is hereby authorized and directed to deliver the 2010 Note to the Purchaser, and receive payment therefore on behalf of the County. The Chairman of the Board or any other Commissioner of the County and the Chief of Staff or Assistant Chief of Staff of the County are authorized and directed to prepare, verify and file the debt statement required by Section 8110 of the Act, and to take other necessary action, including, if necessary or desirable, the filing, either before or after the issuance of the 2010 Note, additional debt statements or any statements required to qualify any portion of the debt from the appropriate debt limit as self-liquidating or subsidized debt.

SECTION 8. _____, _____, Pennsylvania, or such other bank or bank and trust company authorized to do business in the Commonwealth, as may be selected by the Chairman of the Board, is hereby designated as the Sinking Fund Depository for the obligation herein authorized, and there is hereby created and established a Sinking Fund, to be known as the "County of Lackawanna, Pennsylvania, Sinking Fund - Federally Taxable General Obligation Note, Series A of 2010", for the payment of the principal and interest thereon which shall be deposited into the Sinking Fund no later than the date upon which the same becomes due and payable. The Chief of Staff, Assistant Chief of Staff or Treasurer of the County shall deposit into the Sinking Fund, which shall be maintained until such obligation is paid in full, sufficient amounts for payment and interest on the obligation no later than the date upon which such payments shall become due. The Sinking Fund Depository shall, as and when said payments are due, without further action by the County withdraw available monies in the Sinking Fund and apply said monies to payment of the principal of and interest on the obligation.

SECTION 9. The Chairman of the Board or any other Commissioner of the County and the

Chief of Staff or Assistant Chief of Staff of the County are hereby authorized to contract with _____, _____, Pennsylvania, or such other bank or bank and trust company authorized to do business in the Commonwealth, as may be selected by the Chairman of the Board, for its services as Sinking Fund Depository for the 2010 Note and Paying Agent for the same (the "Paying Agent").

SECTION 10. In compliance with Section 8161 of the Act, the Board has determined that a private sale by negotiation, rather than public sale, is in the best financial interest of the County. The Commitment Letter is hereby accepted and the 2010 Note in the amount of \$3,319,000, herein authorized to be issued and sold, is hereby awarded and sold to the Purchaser in accordance with its commitment to purchase the 2010 Note at par; provided the 2010 Note is dated the date of delivery thereof to the Purchaser and is in substantially the form set forth in Exhibit B to this Ordinance with such changes as may be approved by the officers of the County executing such 2010 Note; and further provided that the proceedings have been approved by the Department of Community and Economic Development if such approval is required under the provisions of the Act. A copy of said Commitment Letter shall be attached hereto as "Exhibit C" and lodged with the official minutes of this meeting and is hereby incorporated herein by reference.

SECTION 11. If necessary, the County hereby approves the execution of one or more investment agreements, the purchase of certain U.S. Treasury obligations or any other securities or investments (the "Investments") for investment of the proceeds of the 2010 Note in connection with the Project and the refunding of the 1999 Bonds. The County hereby authorizes and directs the Chairman of the Board or any other Commissioner of the County to execute and the Chief of Staff or Assistant Chief of Staff of the County to attest any investment agreement on behalf of the County, in the form approved by the Solicitor and Bond Counsel of the County. The Investments shall be limited to those authorized under law for proceeds of the 2010 Note.

SECTION 12. The County hereby appoints and engages Stevens & Lee, a professional corporation, to act as Bond Counsel to the County in connection with the issuance of the 2010 Note and to facilitate the intent of this Ordinance.

SECTION 13. All expenses incurred in connection with issuance of the 2010 Note shall be paid out of the proceeds derived from the issuance of the 2010 Note and the Chairman of the Board or any other Commissioner of the County is authorized to approve requests for payment of such expenses and to pay such expenses.

SECTION 14. The action of the proper officers and the advertising of a summary of this Ordinance as required by law in a newspaper of general circulation in the County, is ratified and confirmed. The advertisement of enactment in said newspaper is hereby directed within fifteen (15) days following the day of final enactment.

SECTION 15. The Board hereby authorizes and directs its Chairman, any other Commissioner of the County, the Chief of Staff, the Assistant Chief of Staff, the Treasurer and any other proper officer of the County (without limitation except as may be expressly set forth herein) to execute and deliver such other documents and to take such other action as may be necessary or proper to effect the completion of the financing or the intent and purposes of this Ordinance.

The Board also hereby authorizes and directs its Chairman, any other Commissioner of the County, the Chief of Staff, the Assistant Chief of Staff, the Treasurer and any other proper officers, agents and employees of the County to execute any and all other documents and to take any and all action necessary in connection with the Project to cause the 1999 Bonds to "no longer be deemed to be outstanding" as of the date of delivery of the 2010 Note, within the meaning and for the purposes of Section 8250 of the Act and to cause the refunding of the 1999 Bonds on or about _____, 2010, or such earlier or later date selected by the Chairman of the Board.

SECTION 16. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the County that the remainder of this Ordinance shall remain in full force and effect.

SECTION 17. All ordinances or parts of ordinances not in accordance with this Ordinance are hereby repealed insofar as they conflict herewith.

SECTION 18. This Ordinance shall be effective in accordance with Section 8003 of the Act.

ADOPTED at a regular meeting of the Board of Commissioners of Lackawanna

County held on March 10, 2010.

COUNTY OF LACKAWANNA



MICHAEL J. WASHO



COREY D. O'BRIEN



A.J. MUNCHAK

ATTEST:



MARIA ELKINS
CHIEF OF STAFF

Approved as to form and legality:



JOHN R. O'BRIEN, ESQUIRE
COUNTY SOLICITOR