SUNY/PPAA WINTER CONFERENCE
Office for Capital Facilities
February 2019
Update:
- NY HE LSRE Project
- NFPA
- Red Cross
- Cold Weather
- AiM Updates
- Grant Specialist
- Campus Lets

Private Use
NEW YORK HIGHER ED LARGE SCALE RENEWABLE ENERGY (NY HE LSRE)

• No Longer able to use the name NYCARES

• Consultant selection in process

• Planning a day long workshop with consultant
• Paradox of global warming – more frequent cold events
• Energy Prices have been high
• NY Seems to have escaped the worst
GRANT SPECIALIST

• Work with campuses to complete grant paperwork

• Help with Measurement and Verification (M&V)

• Will be paid for by having a small portion of the grant goes to the persons salary
GREEN REVOLVING LOAN FUND

- Low interest loans ≈ 2.5% no additional fees
- Projects that save on energy budget
- Launching this Spring
GREEN REVOLVING LOAN FUND

• Don’t do one without the other – HVAC and Envelope

• First project – Oneonta as part of full rehab

• Looking for follow-on projects just focusing on HVAC and Envelope
CAMPUS LET CONTRACTS
UPCOMING INITIATIVES

• **Tools**
  • Construction Agreement Updates
  • NYPA Solar Advisory Contract Template

• **Training**
  • Campus Let Contracts Training @ System Administration – TBD
  • Consultant Selection Webinar – May
CAMPUS LET CONTRACTS
UPCOMING INITIATIVES

• Communication, Guidance Documents:
  • Purchase and Install and Services
  • Electric Vehicle Charging Stations
  • Energy Performance Contracting
NFPA New Chargeback

- Chargeback of $20,000 across 64 campuses
- Includes Community Colleges and Statutory Colleges
- Access to all NFPA Codes
- Cost per campus ranges $43 – 1,250, most around $500
- Separate Licenses per campus $4,500
• No limit to licenses

• AiM Cad – Being Replaced by Ready Space

• AiM O&M to be supplements by Ready Request

• Three sessions tomorrow to cover AiM Topics

• Increase in annual chargeback
PRIVATE USE REGULATIONS
FOR COLLEGES AND
UNIVERSITIES

Karren Bee-Donohoe, Associate Vice Chancellor for Capital Facilities
State University of New York System Administration
January 2019
USING BONDS

- Cash for Capital Projects
- Acquisition
- Renovation
- Planning and Design
- New Construction
- Infrastructure
- Equipment
- Software
TREATMENT OF INTEREST FOR BONDHOLDER

Federal Income Tax

Taxable  YES

Tax-Exempt  NO

Preferred
COMPLICATED
RULES

Government or 501.c.3 Bond
for use on governmental
or not-for-profit facilities

Private Activity Bond
because of non-
governmental use in the facility

Qualified Private Activity Bond
because the non-
governmental use passes the private activity tests
PAY IRS FOR LOST TAX-REVENUES

RESTRICTION ON FUTURE TAX-EXEMPT BONDING

NEGATIVE IMPACT TO CREDIT RATING

RISKS OF NON-COMPLIANCE
WHAT IS PRIVATE USE?

• Use by entity that is NOT a state or local government
• Use by the Federal Government
• Use by a 501.c.3 not-for-profit
EXAMPLES OF PRIVATE USE

- Dining
- Bookstores
- Vending
- Banking
- Child Care
- Laundry
- Federal or corporate sponsored research

Operation by a third party vendor; and
• Track Inventory of all space in AiM
• Update the use of the space, who and how in AiM
• Certify accuracy of data annually
**DIRECT USE**

- Track and calculate % of direct use
- Only Space in full control of the entity counts

**INDIRECT USE**

- Apply % of direct use to Indirect Facilities
- Only served buildings % counts
PRIVATE ACTIVITY LIMITATIONS - BASICS

5% unrelated plus 5% related = Max 10%

$15 M per Bond Issue
IMPACT OF THE $15M RULE

Example $1B Bond sale:

$15M/$1,000M = 0.015 or 1.5%

SUNY is allotted a portion of the $15M in relation to the SUNY portion of the Sale
PRIVATE USE LIMITATIONS - ADVANCED

Private Use + Private Payments = Private Activity
PRIVATE PAYMENT

Rent or fees
Greater than operating expenses
CONTRACTS THAT MAY LEAD TO PRIVATE PAYMENT

- Permit or Lease Agreements
- Management Contracts
- Research Contracts

Check Safe Harbors
PERMITS

Specific Use Permits

Dining
Bookstore
Childcare
Banking

Public use - OK if < 50 days

Concerts
Sports Camps
Craft Fair
Professional Exams

Check Safe Harbors
LEASES

Ground Lease

Building or Space Lease

SUNY Cannot Lease Land, space or buildings EXCEPT:

• To the Alumni for student housing
• For energy production or management
• Start UP NY
• Per special legislation
SAFE HARBORS FOR LEASE OR PERMIT AGREEMENTS

• First Come First Use Permits <50 days
• Incidental use less than 2.5% of total space
• No private payment
HOW TO HAVE NO PRIVATE PAYMENT ON A LEASE OR PERMIT?

Private Use + Private Payments = No Activity

Zero Compensation leases
• Contracts for services such as:
  • Custodial;
  • Copy machine repair;
  • Billing;
  • Security;
  • Energy performance contracting
SAFE HARBORS FOR MANAGEMENT CONTRACTS

Incidental to the University Function, i.e. janitorial

Physician privileges – if available to all qualified MDs

Excess electric generation – only direct expenses + OH
MORE SAFE HARBOR RULES FOR MANAGEMENT CONTRACTS

Profit Share Payments must be reasonable

Payments cannot be based on net profit

Payment may be on % of Gross revenue or % of expenses but not both
RESEARCH AGREEMENTS

Agreement with Corporate or Industry partner

Agreement with Federal Government
SAFE HARBORS FOR SPONSORED RESEARCH CONTRACTS

Agreement is for basic research
Licensing terms must be consistent for all
Timing for pricing of licensing is important
Many more
COMBINING TAXABLE AND TAX EXEMPT FINANCING

Pre-2016 Taxable use was fixed in place

Post-2016 Taxable use can move as long as % does not increase
ROLE OF THE CONSTRUCTION FUND

Plan ahead for taxable bonds
Provides detailed info to Bond Counsel
Track bonds to specific projects
CONCLUSION

Risk of non compliance is significant

Mitigation

Tracking Private use is necessary

Managing agreements is important