



Guidance through the storm: Emergency repairs, financing

By Emily Hammond | Dorsey & Whitney LLP

Severe storms, high winds and flooding in the past couple of years have left many Iowa communities in need of repair. For cities hit by natural disasters, the *Code of Iowa* offers support in the form of special rules for emergency repair and financing. >

< *Emergency Repair*

Generally, when a public improvement project exceeds the competitive bid or competitive quote thresholds set by the Iowa Department of Transportation, cities must comply with the construction contract procurement procedures set forth in *Code* Chapter 26. However, when an emergency repair of a public improvement is necessary, state law provides an exception.

Section 384.103 provides, in relevant part, that “when an emergency repair of a public improvement is necessary, and the delay of advertising and a public letting might cause serious loss or injury to the city,” the city need not comply with Chapter 26.

Instead, Section 384.103 provides a different process. First, the chief officer or official of the governing body of the city must make a finding of the necessity to institute emergency proceedings. The chief officer or official must also procure a certificate from a competent licensed professional engineer or registered architect certifying that the emergency repairs are necessary. After making such a finding and procuring such a certificate, the city council is authorized to accept, enter into and make payment under a contract for emergency repairs.

It is important to note that this exception applies only to “repairs,” and does not allow for new construction. Additionally, city officials will want to carefully consider whether the situation warrants a finding of emergency.

As always, when considering whether to forego the normal bid letting procedures, it is important to consult your city attorney and other helpful professionals.

Emergency Financing

Sections 384.24(3)(w) and (x) of the *Code* (the “Disaster Financing Provisions”) provide, in relevant part, that if an event has been proclaimed a “disaster emergency” by the Governor or a “major disaster” by the President, cities can borrow:

- (w) for the remediation, restoration, repair, clean-up, replacement and improvement of property, buildings, equipment and public facilities that have been damaged
- (x) for the reimbursement of city funds for expenditures made related to remediation, restoration, repair and cleanup of damage caused by a disaster

Although these provisions may not seem much different than the standard city borrowing provisions, there are a few key departures.

The first key departure relates to the characterization of the borrowing purposes, which affect the authorization process. General Obligation borrowing in Iowa is separated into two categories: “essential” corporate purpose and “general” corporate purpose. Normally, when a city borrows money for a “general” corporate purpose, the city must authorize the loan through either an election or a “reverse referendum” (the right of citizens to petition for an election).

However, the Disaster Financing Provisions fall into the “essential” corporate purpose category. This means that even if the underlying project would normally fall into the “general” corporate purpose category, requiring an election or reverse referendum, cities can authorize debt for the qualifying disaster-related project with a simple public hearing. Common general corporate purpose projects include municipal buildings, swimming pools, recreation centers, libraries and airport improvements. A full list can be found in *Code* Section 384.24(4).

The Disaster Financing Provisions do have a dollar limit, however. Cities are only able to borrow up to \$3,000,000 under the Disaster Financing Provisions before the authorization process is subject to a reverse referendum.

< *The Marshalltown Veterans Memorial Coliseum suffered significant damage from a tornado in July of 2018. An important city asset, rebuilding of the roof has been completed as the community continues to recover from the natural disaster.*



Another key departure from the normal borrowing provisions is the ability of cities to borrow specifically for the reimbursement of city funds used for remediation, restoration, repair and cleanup. Generally, reimbursement of city funds cannot be the stated borrowing purpose. Although cities can use loan proceeds to reimburse their accounts for funds spent in connection with specific projects, subject to certain Internal Revenue Service limitations, “reimbursement” is not considered a purpose in and of itself.

The Disaster Financing Provisions allow for this reimbursement purpose, giving cities the ability to first use cash-on-hand for immediate, disaster-related projects and then later borrow money to reimburse city funds. This provision helps to prevent the disaster from crippling a city’s day-to-day operations. Cities should keep in mind, however, that there may be federal tax consequences when borrowing for reimbursement of city funds, and should consult an expert if planning to do so.

The final key departure from the standard municipal finance provisions relates to the term of the bonds. Under normal circumstances, general obligation bonds cannot be outstanding for a period greater than 20 years. Section 76.1 of the *Code* increases this time peri-

od, allowing cities to borrow for up to 30 years. The increased time period for borrowing allows cities to make lower annual payments, reducing the annual property tax burden on citizens. It also gives cities more flexibility with the amortization of the loan, such that a city might be better able to account for existing city debt.

When disaster hits, the Code provides cities with special tools for emergency repair and financing. These tools allow cities to act more quickly and with more certainty, maintain day-to-day operations and reduce the annual property tax burden on citizens. If you think these provisions could help your community, reach out to your bond attorneys and financial advisors. They can guide you through the storm.

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