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GOVERNMENT & REGULATORY ALERT

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Supreme Court Reverses its Original Opinion in *Strand v. Escambia County*

Last year, on September 6, 2007, the Florida Supreme Court overturned 27 years of case law when it unanimously held that a referendum was required before tax increment financing (“TIF”) bonds could be issued by Escambia County in *Dr. Gregory L. Strand v. Escambia County, Florida, etc. et. al.* At issue was Article VII, Section 12 of the Florida Constitution, which provides that school districts and other local governments must hold a referendum to issue bonds payable from ad valorem taxation and maturing more than twelve months after issuance. Receding from its prior decisions in *State v. Miami Beach Redevelopment Agency*, 392, So.2d 968, 972 (Fla. 1982) and *Florida v. School Board of Sarasota County*, 561 So.2d 549 (Fla. 1990), where the Court authorized the issuance of tax increment bonds and certificates of participation (securities which allows investors to purchase shares of lease revenues that are typically used to fund the construction of buildings such as schools) without a referendum, the Court broadened its interpretation of the phrase “payable from ad valorem taxation” and held that the Constitutional referendum requirement applies whenever ad valorem tax revenues are a payment source for the bonds.

On September 17, 2008, and after consideration of Escambia County’s motion for rehearing, the Court, in an about face, withdrew the original *Strand* opinion, and issued a new opinion consistent with its past holding in *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980). In the 3-2 decision written by Justice Charles Wells, the Court retreated to its long-standing view of tax-increment financing and abandoned the restrictions on its use espoused in the original *Strand* opinion. It did so primarily on the grounds of *stare decisis*, reasoning that “for the past 27 years there has been widespread reliance upon the *Miami Beach* decision in the issuance of bond financing of many public works that have enhanced the quality of life in our State. Tax increment financing and the undergirding principles of our *Miami Beach* decision have been inextricably woven into the financial fabric of our state. We conclude that receding from precedent of *Miami Beach* would cause serious disruption to the governmental authorities that have relied upon the precedent for planning public works that are in various stages of development and approval.” *Dr. Gregory L. Strand v. Escambia County, Florida, etc. et. al.*, No. SC06-1894 (Fla. Sept. 18, 2008) at 18.

The original *Strand* opinion called into question the constitutionality of previously issued tax increment financing bonds and certificates of participation. Later, on September 28, 2007, the Court issued a revised opinion clarifying that the Court had not intended to impact the validity of certificates of participation. The September 28, 2007, opinion did not, however, change the Court’s position that a referendum would be required prior to the issuance of tax increment financing bonds. Because TIF financing is primarily used by Community Redevelopment Agencies, both of the 2007 *Strand* opinions imposed severe restrictions on the primary source of funds used by local governments to revitalize blighted neighborhoods. Now, one year from the release of the original and revised opinions, the Court has issued a new decision on rehearing that removes the cloud it had placed on TIF financing and returns local governments and any private sector participants seeking draw on such financing to the *status quo ante*. Assuming there are no further revisions, Community Redevelopment Areas are now able to obtain tax increment financing for infrastructure projects without voter referendum, which should welcome in a number of large scale capital improvement projects slated for Florida’s major cities. ■

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