

Financial Assurance Training Workshop



Garden City – May 7, 2013

Emporia – May 14, 2013

By

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environment of all Kansans.**

K.S.A. 65-3407

- Requires permittee to assure funds will be available to pay for closure and post closure care
 1. If the permittee owns the land, any FA method listed in the regulation is authorized.
 2. If the permittee does not own the land, FA requirement must be met by a purchased financial instrument.

Financial Assurance Methods

(K.A.R. 28-29-2101)

- Trust Fund
- Surety bond guaranteeing payment or performance
- An irrevocable letter of credit
- An insurance policy

Financial Assurance Methods

- A corporate financial test and/or guarantee
- Local government financial test, ad valorem
- An assigned CD

Simplified Financial Instrument

- For a closure cost estimate of \$100,000 or less - may use a simplified bond or letter of credit. Does not require a trust fund.
- For a closure cost estimate of \$25,000 or less – may use an assigned certificate of deposit or an assigned escrow account

Combinations of Instruments/Methods

- A surety bond guaranteeing performance cannot be used with another purchased financial instrument
- Any county that has established a dedicated fee fund pursuant to K.S.A. 65-3415f, may reduce the amount of financial assurance demonstrated by any other method by the current balance in the fund

Financial Assurance Criteria

- Must be continuous
- Equal to or greater than the latest approved costs estimate(s)
- Be available when needed
- Legally enforceable

Specifics of FA to Meet Criteria

- Evergreen Clause: instrument continues as long as the permit is in force
- Amount is required to assure the costs of closure and/or post closure

Specifics of FA to Meet Criteria

- Must always be in effect unless released
- FA method shall meet the requirements of statutes and regulations

Calculation of Financial Assurance for Solid Waste Disposal Areas

- Closure – cost to complete final closure of the largest area to lack final cover at any one time before the next annual permit renewal.

Calculation of Financial Assurance for Solid Waste Disposal Areas

- Post Closure – costs to be incurred for the largest area to have waste in place before the next annual permit renewal. Reference the approved facility PC plan for a PC period of 30 years, costs shall include:

Calculation of Financial Assurance for Solid Waste Disposal Areas

- i. Care and maintenance of the area including all appurtenances and
- ii. All required environmental monitoring

Costs Estimating Rules

- Potential salvage values shall not be incorporated into cost estimates to offset costs
- Disposal costs for recycling of materials with potential economic value shall not be assigned “zero values”

Documentation of Cost Estimates

- Pricing of the activities in the approved facility closure and/or post closure plan(s)
- The owner or operator shall submit the cost estimates on worksheets provided by the department or on other forms that contain the same information

Third Party Costs

- Parent companies and subsidiaries shall not be considered third parties for estimating purposes
- The regulations do not require that the estimates be prepared by a third party but they do require the sources of the estimates to be third party

Third Party Costs Sources

- Representative costs supplied by the department
- Actual invoices paid by the owner or operator for the same or similar work
- Written bids from professional contractors
- Authoritative cost tables; i.e., R.S. Means

When FA is Required

- Before the permit issued including transfers
- Before a permit modification is issued
- Annually before permit renewal for active facilities and closed facilities

Evaluation of FA Amount

- Planned activities meet statutes and regulations, permit conditions, and are protective of public health and safety and the environment; and
- Revisions shall be made by the department in accordance with the evaluation, if the cost estimate factors are not acceptable

Updating Cost Estimates

- Cost estimates must be updated to reflect any changed conditions
- Cost estimates must be priced accordingly in current dollars or adjusted for inflation
- Cost estimates must be current to determine the required amount of financial assurance

Updating Cost Estimates and Financial Assurance

- **K.A.R. 28-29-2101. Financial Assurance for closure and post closure. (f)(1) if a change to any of the following has occurred that will change the cost of closure, post closure, or both, the owner or operator shall recalculate the affected cost or costs, consistent with the change: (C) conditions at the facility.**

Adjusting Cost Estimates for Inflation

- Use implicit price deflator for gross domestic product (GDP)
- Table 1.1.9, Bureau of Economic Analysis, U. S. Department of Commerce

Adjusting Unit Costs for Inflation

[Bureau of Economic Analysis Table 1.1.9.htm](#)

- Line 2011 2012 1 Gross domestic product
113.359 115.387
- 2012-115.387 divided by 1998- 85.584 =
1.348 or 34.8% inflation

Release Schedule for GDP

- Advance, second, third estimates – 30 days, 60 days, 90 days after the previous quarter

[U.S. Dept of Commerce/Bureau of Economic Analysis News Release Schedule 2013](#)

Termination of Purchased Financial Instruments

- The financial institution gives 120 days notice by certified mail
- The owner or operator provides alternate financial assurance
- The owner or operator is released by the department from further financial assurance obligation

Failure of FA Method or Inadequate Amount

- Regulations authorize 60 days but no more than 90 days after obtaining the information
- First notice is for 60 days
- Second notice is letter of warning for additional 30 days
- Non-compliance is sent to Enforcement

General Condition 7 of the Permit

- When permittee submits a complete and timely a renewal, they may continue to conduct operations if: (a) the permittee is in compliance otherwise; and (b) the dept., thru no fault of the permittee, has not taken final action on the renewal on or before the renewal date
- The permit remains fully effective & enforceable

Corporate Financial Test

K.A.R. 28-29-2108

- Required documents
 - 1) Chief financial officer's letter (CFO's)
 - 2) Audited comprehensive annual financial report (CAFR)
 - 3) Auditor's special report to verify numbers used in CFO's letter are from the audited CAFR

Corporate Financial Test

K.A.R. 28-29-2108

- Financial test calculations
 - i. Senior unsubordinated debt rating
 - ii. Total liabilities/net worth ≤ 1.5
 - iii. NI and DDA - \$10M/total liabilities $\Rightarrow .1$
 - iv. Costs assured + \$10M/tangible NW ≤ 1
 - v. Net costs assured + \$10M/tangible NW ≤ 1
 - vi. Cost assured/U.S. assets ≤ 1

Local Government (logo) Financial Test

K.A.R. 28-29-2110

- Required documents
 - 1) Chief financial officer's letter (CFO's)
 - 2) Audited comprehensive annual financial report (CAFR)
 - 3) Auditor's special report to verify numbers used in CFO's letter are from the audited CAFR

Local Government (logo) Financial Test

K.A.R. 28-29-2110

- Bond rating or financial ratios test
- Common calculations
 - ✓ environmental obligations assured/total annual revenue can be no more than 43%
 - ✓ total annual revenue/total annual expenditures =>95%
- Variance to LOGO test effective July 22, 2011

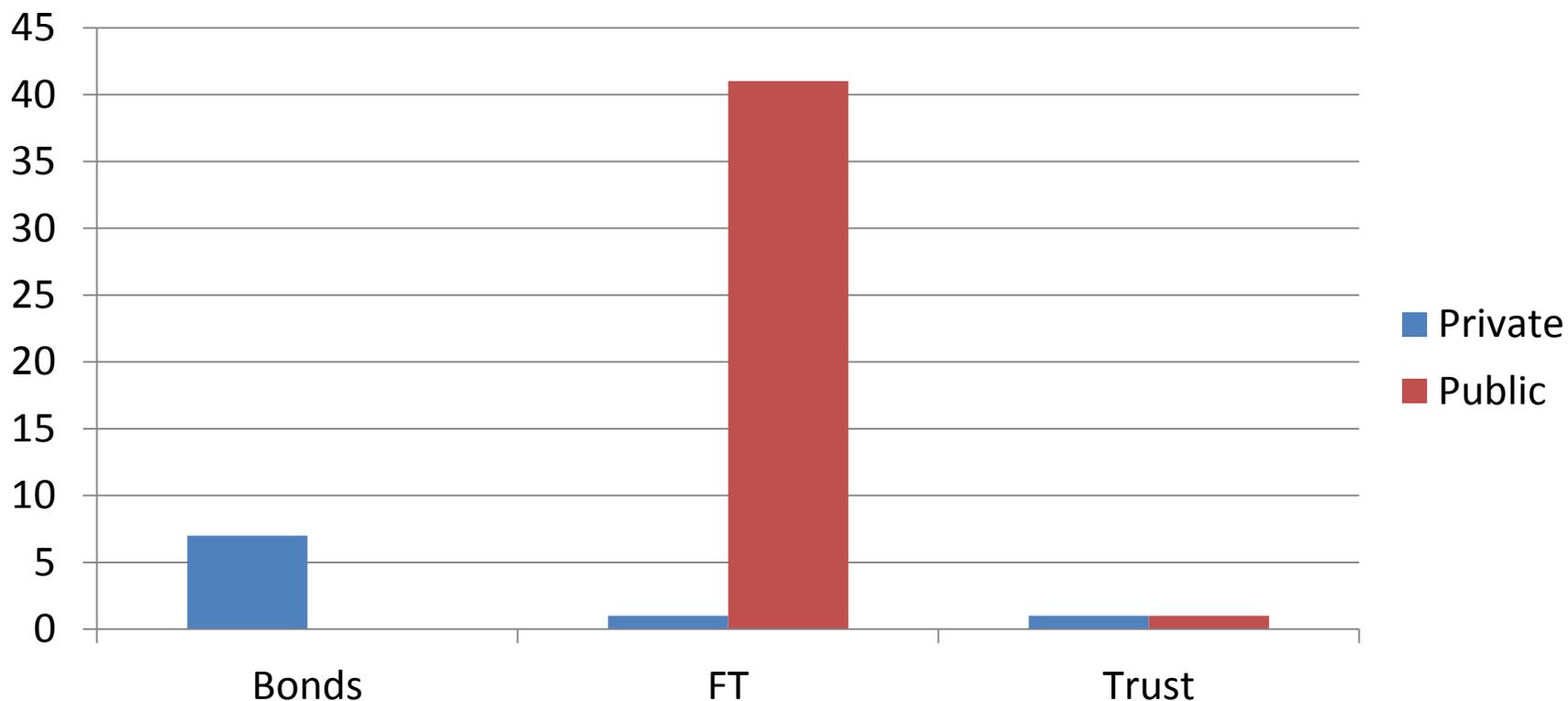
Ranking of FA Methods

Owners	State
Corporate Financial Test	Trust Fund
Corporate Guarantee	Letter of Credit
Insurance	Surety Bond
Letter of Credit	Insurance
Surety Bond	Corporate Guarantee
Trust Fund	Corporate Financial Test

Costs & Risks with FA Methods

Method	Cost to Owner	Risk to State
Trust Fund	High	Low
Letter of Credit	Medium-High	Low
Surety Bond	Medium-High	Medium-Low
Insurance	Medium-High	Medium
Corporate Financial Test	Low	High
Corporate Guarantee	Low	High

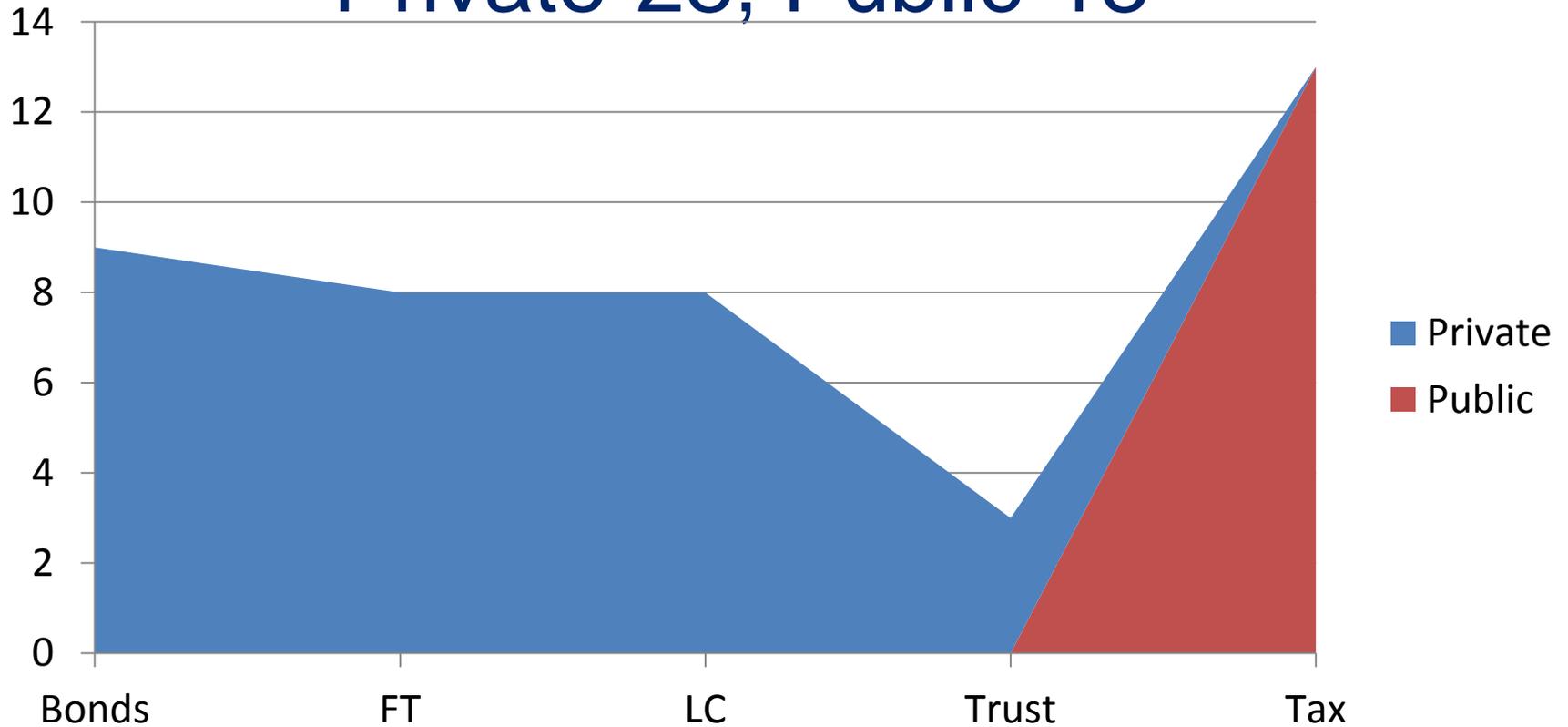
Financial Assurance for MSWLFs



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Financial Assurance for Industrial Landfills

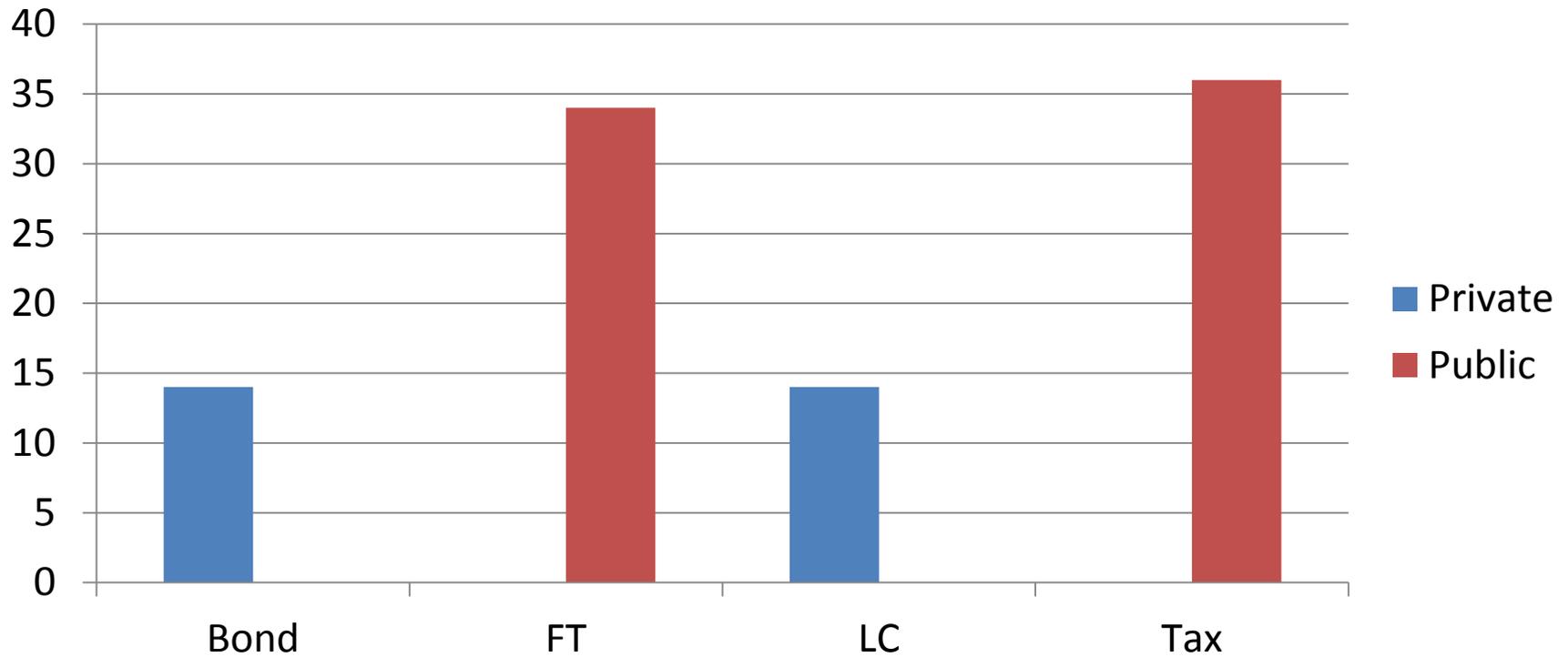
Private-28, Public-13



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Financial Assurance for Construction & Demolition Landfills: Private-28 Public-70



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FA Summary

- **Owner or operator develops the cost estimates for closure and/or post closure of the facility/site and documents the cost using the worksheets provided**

FA Summary

- **It is the responsibility of the owner and/or operator to report any changes in their operations that affect the cost estimates and financial assurance**

FA Summary

- **FA is continuous, equal to, at a minimum, with the cost estimate, available when needed, and legally enforceable**

Information Resources

- A.M. Best – <http://www.ambest.com/>
- FDIC – <http://www2.fdic.gov/idasp/main.asp>
- U.S. Treasury Dept. Circular 570 – <http://www.fms.treas.gov/c570/c570.html>
- [U.S. Dept. of Commerce, Bureau of Economic Analysis Table](#)

Information Resources (cont'd)

- Kansas Insurance Department:

<http://www.ksinsurance.org/>

- Office of the State Bank Commissioner

<http://www.osbckansas.org/DOB/DOB>

[FinancialInstitutionSearch/banklist.html](http://www.osbckansas.org/DOB/DOB)

- Bureau of Waste Management:

<http://www.kdheks.gov/waste/index.html>

Financial Assurance Auditor

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Questions and Answers



And



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