

Sinking Fund Legislation Approved by Senate, November 2, 2016

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The Michigan Senate passed HB 4388, which amends Section 1212 of the School Code to allow additional uses of sinking fund proceeds for sinking fund millage proposals authorized by the voters after the bill becomes effective.

The bill, which had already passed the House, and was passed by the Senate on Oct. 20, 2016, is expected to be enrolled on Nov. 9, 2016. The Senate declined to grant the bill immediate effect, which means that it will apply to proposals approved by voters at elections held after late March 2017 (90 days after the Legislature adjourns in December 2016). In addition to broadening the purposes as described below, the bill reduces the permitted number of mills from 5 to 3 and the permitted duration of the authority to levy from 20 years to 10 for proposals authorized after the new legislation becomes effective.

Expanded Purposes

HB 4388 maintains the originally permitted uses of sinking fund proceeds and adds “school security improvements” and “the acquisition or upgrading of technology.” Both terms are defined in the new legislation.

Under the bill, school security improvements must be “capital improvements or purchases” “designed to act as a deterrent to unauthorized entry of persons or items onto school premises or to otherwise promote security,” which also includes security equipment and a mobile telephone application that provides the ability to communicate with personnel on site while also connecting an emergency call to a 9-1-1 center. Any portion of these “expanded” purposes which constitutes infrastructure improvements also could have been accomplished under the original language of Section 1212.

The technology definition imports the definition of that term in Section 1351a (school bonding provisions) of the School Code, which is unfortunate for several reasons:

- First, Section 1351a specifically excludes upgrades from the definition of technology, potentially making the upgrade language in HB 4388 meaningless.
- Second, the term technology in Section 1351 is limited to instructional technology, which has been interpreted to mean only the computers and peripherals which students use (as opposed to staff computers) and specifically prohibits the use of funds to purchase off the shelf application software.

Impact on Pre HB 4388 Sinking Fund Authorizations

Many existing school district sinking fund authorizations, and those on the Nov. 2016 ballot, contain language intended to pick up expanded permitted uses in the event of a law change. Usually, the proposals allow for “any other purpose which may be permitted by law.” Unfortunately, because of the way the Legislature worded HB 4388 to apply only to proposals authorized by the voters after the amendments become effective, those districts will not be able to take advantage of the expanded purposes it allows. At the same time, the pre-HB 4388 authorizations, including those for more than 3 mills and more than 10 years, remain valid and districts may continue those levies for the purposes authorized under the original Section 1212.

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Replacement of Pre HB 4388 Sinking Fund Authorizations?

School districts with existing sinking fund authorizations may want to consider requesting voter approval for a replacement sinking fund authorization to take advantage of the expanded purposes once the new law becomes effective. School districts could target an election date at which it would not have to pay for the election such as its General School Election date or an election date at which other governmental units are holding an election. The replacement proposal, of course, would have to stay within the new 3-mill and 10-year term limitations. If the voters did not approve the replacement proposal the existing proposal would continue to be authorized.

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