

# School Building and Site Sinking Fund: What Every Technical Director Needs to Know



## Michigan School Business Officials 2017 Annual Conference

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## Sinking Fund Legislation: Public Act 319

- ❑ Public Act 319 amended Section 1212 of the School Code (MCL § 380.1212) to allow additional uses for sinking fund proceeds.
- ❑ Amendments only apply to sinking fund millage authorized after the effective date of P.A. 319.
- ❑ Effective date: March 29, 2017.

## Voter Approval...



- Pre-2017 Authorization: Up to 5 mills for up to 20 years.
- Post-2016 Authorization: Up to 3 mills for up to 10 years.
- Current sinking fund authorizations not affected.
- Replacement proposal?

# Building and Sinking Fund: Permissible Uses Expanded

Pre-2017 Voter Authorization	Post-2016 Voter Authorization
<ul style="list-style-type: none"> <li>• Voter Approval</li> </ul>	<ul style="list-style-type: none"> <li>• Voter Approval.</li> </ul>
<ul style="list-style-type: none"> <li>• Up to 5 mills for up to 20 years.</li> </ul>	<ul style="list-style-type: none"> <li>★ Up to 3 mills for up to 10 years.</li> </ul>
<ul style="list-style-type: none"> <li>• Purchase of real estate for sites for, and the construction or repair of, school buildings.</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase of real estate for sites for, and the construction or repair of, school buildings, for school security improvements, or for the acquisition or upgrading of technology.</li> </ul>
<ul style="list-style-type: none"> <li>• NO EQUIPMENT OR FURNISHINGS.</li> </ul>	<ul style="list-style-type: none"> <li>★ NO EQUIPMENT OR FURNISHINGS OTHER THAN SCHOOL SECURITY IMPROVEMENTS AND ACQUISITION AND UPGRADING OF TECHNOLOGY.</li> </ul>
<ul style="list-style-type: none"> <li>• NO MAINTENANCE</li> </ul>	<ul style="list-style-type: none"> <li>• NO MAINTENANCE</li> </ul>
<ul style="list-style-type: none"> <li>• ANNUAL AUDIT</li> </ul>	<ul style="list-style-type: none"> <li>• ANNUAL AUDIT</li> </ul>

# Treasury Bulletin



- ❑ **The purchase of real estate for school building sites.** In addition to purchasing land for school building sites, the Department of Treasury has interpreted this provision to include the development and improvement of such sites.
  
- ❑ **The construction of school buildings.** The Department of Treasury has interpreted this provision to include the construction of new school buildings and additions to, and the remodeling of, existing school buildings. A Sinking Fund may be used for technology, but is limited to wiring or materials for installing technology and does not include equipment and software. A Sinking Fund may not be used for furnishing and equipping.
  
- ❑ **The repair of school buildings.** A Sinking Fund may be used for repairs, but must be completed by contracted sources. A Sinking Fund may not be used for maintenance. Maintenance generally means keeping assets in good condition and repairs are directed at putting them back into good condition. Maintenance is preventative while repairs are curative.

## Treasury Letters



The Michigan School Business Officials website contains a database of the sinking fund determination letters previously issued by the Department of Treasury (see, [www.msbo.org](http://www.msbo.org). — School Financing: Sinking Fund Determination Letters).



## “School Security Improvements”

### MCL §380.1212(6)(a)

**"School security improvement"** means any capital improvement or purchase that is designed to act as a deterrent to unauthorized entry of persons or items onto school premises or to otherwise promote security, including, but not limited to, metal detectors, locks, doors, lighting, cameras, and enhancements to entryways. School security improvement also includes a mobile telephone application that provides the ability to communicate with personnel on site while also connecting an emergency telephone call to a 9-1-1 center. School security improvement does not include personnel costs or operation costs related to a capital improvement or purchase or related to a mobile telephone application.

# “Technology”



## MCL §380.1351a(5)

As used in this section, "**technology**" means any of the following:

- (a) Hardware and communication devices that transmit, receive, or compute information for pupil instructional purposes.
- (b) The initial purchase of operating system software or customized application software, or both, accompanying the purchase of hardware and communication devices under subdivision (a).
- (c) The costs of design and installation of the hardware, communication devices, and initial operating system software or customized application software authorized under this subsection.



# Technology-Impermissible Expenditures...

## MCL §380.1351a(3)

A school district, ... shall not borrow money and issue notes or bonds under this section to defray all or part of the costs of any of the following:

- (a) Upgrades to operating system or application software.
- (b) Media, including diskettes, compact discs, video tapes, and disks, unless used for the storage of initial operating system software or customized application software included in the definition of technology under this section.
- (c) Training, consulting, maintenance, service contracts, software upgrades, troubleshooting, or software support.



# Software – Post 2017 Sinking Funds

- ❑ May only be used for “[t]he initial purchase of **operating system software** or **customized application software**, or both, accompanying the purchase of hardware...”.
- ❑ No Upgrades!
- ❑ The “operating system software” is usually already loaded on laptops, tablets and other devices.
- ❑ The only application software that is allowed to be purchased with sinking fund proceeds is “customized application software”.
- ❑ No definition for “customized application software”... software application that has been developed or modified for the specific uses of the school district?



# Deposit and Investment of Sinking Fund Proceeds

- ❑ Sinking fund proceeds, as with all funds of the school district, must be deposited in accordance with Section 1221 of the Revised School Code (MCL § 380.1221).
- ❑ Investments of all school funds must be made in accordance with Section 1223 of the Revised School Code (MCL § 380.1223).
- ❑ The sinking fund money must be kept separate from other money of the school district.



# Audit and Misuse of Sinking Funds; Penalties

- ❑ Annual independent audit conducted of the use of the sinking fund proceeds using GAP.
- ★ "If the Department of Treasury determines from the audit report that the sinking fund has been used for a purpose other than those authorized for the sinking fund under Section 1212, the school district shall repay the misused funds to the sinking fund from the school district's general operating funds and shall not levy a sinking fund tax under Section 1212 after the date the Department of Treasury makes such a determination."



# Financing Sinking Fund Projects

- ❑ School districts may consider issuing bonds in anticipation of future sinking fund tax levies.
- ❑ The bond proceeds can only be used for sinking fund eligible projects.
- ❑ Such a financing strategy can provide significant construction saving in instances where the annual sinking fund levy is not sufficient to accomplish an entire project.

# Replacement Sinking Fund Proposal

- ❑ Consider requesting voter approval for replacement sinking fund authorization to take advantage of new law
- ❑ Target election without cost (e.g. general school election)
- ❑ If voters do not approve replacement proposal, the existing proposal would continue to be authorized.

# Three Fixed Regular Election Dates

- ❑ The three fixed regular election dates are as follows:
  - First Tuesday after the first Monday in May;
  - First Tuesday after the first Monday in August;
  - First Tuesday after the first Monday in November.\*

\*The November regular election date, even-years only, is the school district's Regular School Election date.

Note: The March Presidential Primary election date is also an available election date (second Tuesday in March, e.g. March 10, 2020).

# Floater Election Dates

- ❑ Any Tuesday that falls more than 30 days before or 35 days after one of the four fixed regular election dates.
- ❑ Requires initiative petition.
- ❑ 3,000 signatures or 10% of voters who voted in the last gubernatorial election





# Picking an Election Date - Considerations

- Cost.
- Turn-out/ballot fatigue/other ballot issues?
- “Stealth Election”
- Coordination with proposed project timetable.

# Fixed Regular Election Dates

2017	2018	2019
N/A	N/A	N/A
Tuesday, May 2, 2017	Tuesday, May 8, 2018	Tuesday, May 7, 2019
Tuesday, August 8, 2017	Tuesday, August 7, 2018	Tuesday, August 6, 2019
Tuesday, November 7, 2017	Tuesday, November 6, 2018*	Tuesday, November 5, 2019

\*Regular School Election Date

# Sample Replacement Ballot Language

## SINKING FUND MILLAGE REPLACEMENT PROPOSAL

*This proposal would replace and extend the authority last approved by voters in 20\_\_ and which expires with the 20\_\_ levy for [School District] to levy a sinking fund millage. This proposal would allow the use of proceeds of the millage for all purposes previously permitted by law as well as newly authorized security improvements and the acquisition or upgrading of technology.*

As a replacement of existing authority, shall [School District], County of \_\_\_\_\_, State of Michigan, be authorized to levy 3.00 mills (\$3.00 per \$1,000 of taxable valuation) to create a sinking fund for the purpose of the purchase of real estate for school building sites, the construction or repair of school buildings, school security improvements, the acquisition or upgrading of technology and any other purpose which may be allowed by law, by increasing the limitation on the amount of taxes which may be imposed on taxable property in the School District for a period of ten (10) years, being the years 2017 to 2026, inclusive? It is estimated that 3.00 mills (\$3.00 per \$1,000 of taxable valuation) would raise approximately \$\_\_\_\_\_ in the first year that it is levied.

*(Under state law, sinking fund proceeds **may not** be used to pay teacher or administrator salaries.)*

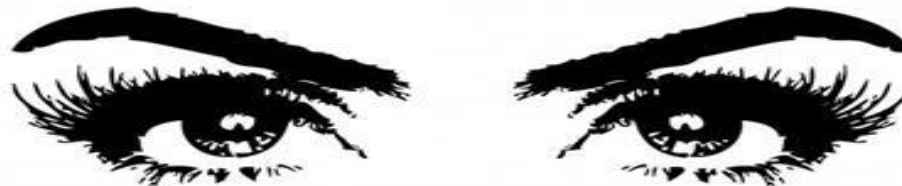
# Sample Election Timetable

## TIMETABLE FOR A SPECIAL SCHOOL ELECTION TO BE HELD ON NOVEMBER 7, 2017

July/August 2017	<u>BOARD ACTION:</u> At this meeting the Board should adopt a Resolution calling for the Sinking Fund Replacement Proposal to be submitted to the electors at a Special School Election to be held on November 7, 2017.
On or before August 15, 2017	<u>CERTIFICATION OF SINKING FUND PROPOSAL:</u> Board shall certify the Sinking Fund Replacement Proposal to the School District's Election Coordinator. (Required to be certified not later than 4:00 p.m., on the twelfth Tuesday before the Special School Election date.)
Tuesday, November 7, 2017	<u>DATE OF SPECIAL SCHOOL ELECTION</u>

# Michigan Campaign Finance Act (“MCFA”) Update

- ❑ 60-Day Black-Out/Gag Order Gone!
- ❑ Recent activities by Secretary of State.
- ❑ You are being watched...
  - Educate administrative staff, including building level administrators



# Advocate? No! Inform? Yes!

- School districts are prohibited from spending public funds or using other resources for campaign activities, including the election or defeat of candidates or ballot proposals.
- School Districts cannot expressly advocate for a ballot proposal but may use its resources to inform (i.e. factual information).

Do not use language like:	However, you may say:
This will really help our kids.	The bond issue is intended to benefit every child in the district.
This will benefit everyone in the district.	Make an informed decision.
We really need your help.	There is a lot of information available.

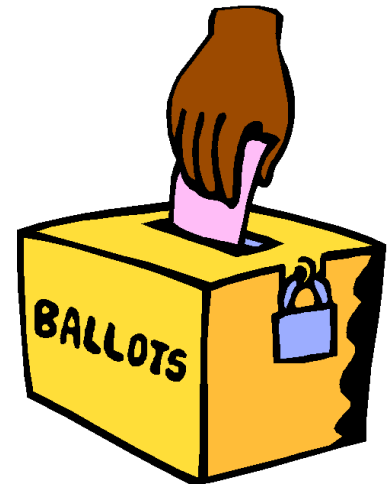
## Michigan Campaign Finance Act: Public Officials

A **Board member or Superintendent** may express his or her views on a ballot proposal at any time without using school district resources. Statements should not imply that they are expressing the viewpoint of the entire school district or its school board.

A **Board member or Superintendent's** occasional, incidental use of public resources (such as telephones, computers, offices, stationary, or postage) to communicate his or her views on a ballot proposal to constituents or the media is permissible.

A **Board member or Superintendent** may discuss a ballot proposal at a school board meeting.

A school board may adopt a resolution supporting or opposing a ballot proposal.



# James M. Crowley

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Principal



Jim Crowley is a member of the Public Finance Practice Group in Miller Canfield's Detroit office, where he concentrates his practice in the areas of school finance, election and general school business law.

Jim has extensive experience in school finance and regularly serves as bond counsel, note counsel, underwriter's counsel, and disclosure counsel for public schools and other issuers.

In these capacities he has served as counsel relating to tax-exempt and taxable financings, fixed and variable rate financings, general obligation and revenue financings, unlimited and limited tax financings, conduit financings, installment purchase agreements, finance leases and operating cash-flow borrowings including state aid notes, tax anticipation notes and lines of credit.

Jim is also well versed in all aspects of the Michigan School Bond Qualification and Loan Program available to public school districts, and has extensive experience with school elections for school bond proposals, operating tax proposals (i.e. renewals, increases and Headlee restorations) and school building and site sinking fund proposals.

Jim also has a wealth of experience in general business law as it relates to public schools including school finance matters under the School Code and the State School Aid Act, employee benefit matters (i.e. MPSERS, 403(b) and 457 plans, etc.), tax law matters and tax-exempt organizations (i.e. education and other foundations, boosters clubs and other affiliated organizations).

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## Articles

Sinking Fund Legislation Approved by Senate



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He is also well versed in all aspects of the Michigan School Bond Qualification and Loan program available to public school districts, including pre and final qualification for participation in the program.

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## **Military**

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## **Articles**

Sinking Fund Legislation Approved by Senate

## Thank you! Any Questions?

- This document is not intended to give legal advice and does not establish any attorney-client relationship. It is comprised of general information. School Districts facing specific issues should seek the assistance of an attorney.

