

# Building & Site Sinking Funds The Nuts & Bolts



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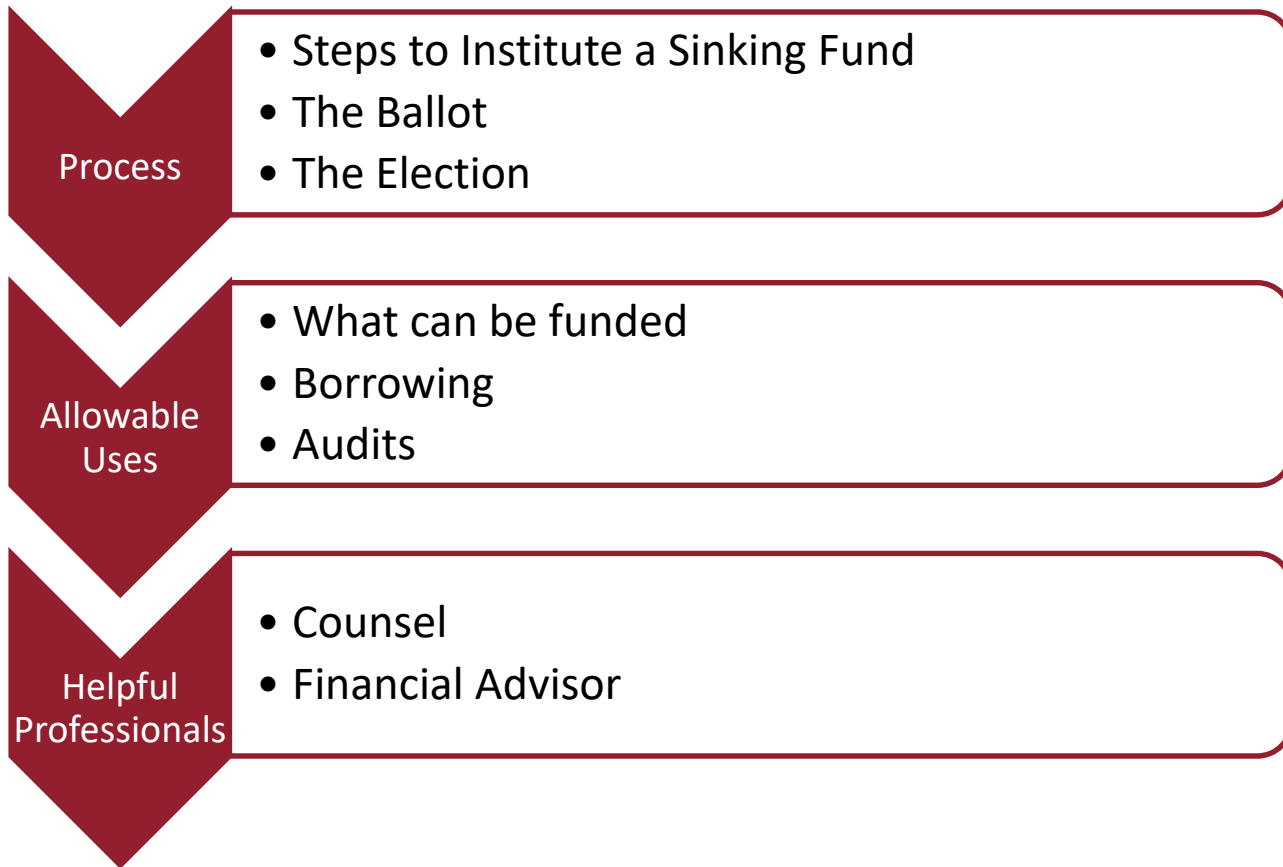
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# GOALS FOR THIS SESSION:



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

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# ESTABLISHING A SINKING FUND

Under the Revised School Code Section 1212, a school district may levy a sinking fund tax to be used for the purchase of real estate for sites for, and the construction or repair of school buildings, subject to the following requirements:

- a. A sinking fund tax levy must be approved by the voters at a regular or special election; and
- b. Under a sinking fund tax levy, a school district may not levy more than 3 mills for a period of not more than 10 years.

Careful consideration should be given to the ballot language.

- a. More specificity can sell to the electors better; but
- b. More generality gives greater project flexibility.



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# SAMPLE BALLOT

\_\_\_\_\_ SCHOOL DISTRICT  
COUNTY OF \_\_\_\_\_, STATE OF MICHIGAN

## BUILDING AND SITE SINKING FUND TAX PROPOSAL

This proposal, if approved by the electors, will allow the \_\_\_\_\_ School District to levy a building and site sinking fund millage, the proceeds of which will be used to make infrastructure improvements and repairs to the School District's facilities. Pursuant to State Law, the expenditure of the building and site sinking fund millage proceeds must be audited, and the proceeds cannot be used for teacher, administrator or employee salaries, maintenance or other operating expenses.

Shall the \_\_\_\_\_ School District, County of \_\_\_\_\_, State of Michigan, be authorized to levy \_\_\_ mills (\$\_\_\_ per \$1,000 of taxable valuation), for a period of \_\_\_\_ (\_\_) years, from July 1, 20\_\_ through June 30, 20\_\_, to create a building and site sinking fund for the purpose of construction or repair of school buildings or any other purpose authorized under law? This millage would provide estimated revenues to the \_\_\_\_\_ School District of approximately \_\_\_\_\_ (\$\_\_\_\_\_) Dollars during the 20\_\_ calendar year, if approved and levied.

YES: \_\_\_\_\_

NO: \_\_\_\_\_

# A WORD ON ELECTION DATES

- Election reform for schools has given us much less leeway in presenting proposals to the electors.
- There are currently four “fixed” election days and the ability to submit a ballot question to borrow money, increase a millage or establish a bond on another date that is:
  - on a Tuesday; and
  - is more than 30 days before or 35 days after one of the four “fixed” dates.
- These “special” elections must be by petition.
- It is important to work with your election officials and counsel to establish the dates to call the election and submit the ballot proposal.



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# ELECTION PROCESS

## **REGULAR/SPECIAL SCHOOL ELECTION TIMETABLE**

\_\_\_\_\_,  
20\_\_

**BOARD ACTION:** At this meeting the Board should adopt a Resolution calling for the Building and Site Sinking Fund Tax Proposal to be submitted to the electors at the Regular/Special School Election to be held on \_\_\_\_\_, 20\_\_.

On or before  
\_\_\_\_\_,  
20\_\_

**CERTIFICATION OF BOND PROPOSITION:** Board shall certify the Building and Site Sinking Fund proposition language to the School District's election coordinator. **(Required to be certified 70 days before the Regular/Special School Election date.)**

Tuesday,  
\_\_\_\_\_,  
20\_\_

**DATE OF REGULAR/SPECIAL SCHOOL ELECTION**

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# USE OF SINKING FUND PROCEEDS

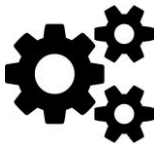
- A sinking fund may only be used for purposes defined in Section 1212 of the Revised School Code, and as further limited by the ballot language;
- The Department of Treasury’s “Bulletin for School District Audits of Bonded Construction Funds and of Sinking Funds in Michigan” lays out three descriptions of allowable purposes as follows:



- 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 or 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.

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# Now that the sinking fund statute has been amended:

## SECURITY

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

(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.



# HISTORICALLY....

- The Department would offer guidance on allowable uses. Not anymore. In fact – not since 2004! So, no guidance on the “technology” and “security improvements” amended language.
- If a proposed sinking fund expenditure does not fit clearly within the guidelines of the Bulletin, the School District assumes significant risk making the expenditure, given the draconian penalty associated with the misuse of sinking fund proceeds: the termination of the sinking fund levy.



- Although the Department no longer issues guidance, the practice has been that any sinking fund expenditure previously approved will continue to be an allowable expenditure.
- While the Department will not compile a list of allowable uses, the MSBO maintains a library of prior Treasury guidance letters.



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# TREASURY HAS OPINED ON THE FOLLOWING USES

- Lockers are not allowable, unless they are structurally designed to be part of the building, are permanently mounted into walls and are part of the structure;



- Painting walls and ceilings is not acceptable – this is considered maintenance;



- Painting new construction is acceptable;



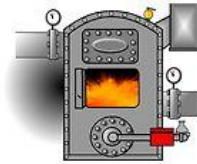
- Telecommunications equipment is not acceptable, but wiring and installation materials may be allowed (but see the new language);



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- Interest and Principal payments on sinking fund bonds is allowable;

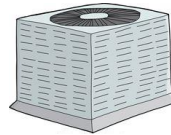


- Boiler and storage tank replacement is allowed...but not water softeners or water softening systems;



- More on boilers: circulating pumps, motors, and exhaust fan motors are not allowable;

- Air handlers, including a/c coils are allowable, but not room or window air conditions (these are considered equipment);



- Lighting upgrades are considered maintenance and not allowed unless all of the existing components are removed.



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# WHAT RULE CAN WE DISCERN?



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# BUT WHAT IF MY PROJECT HAS A HIGH PRICE TAG?

## Financing Building and Site 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.

***Important Note: As a non-voted resolution bond (i.e., limited tax bond) these bonds are subject to the limitations contained in the Revised School Code on the amount of these types of bonds a school district may issue. Generally, under the Revised School Code, a school district's nonvoted debt is limited to an amount which does not exceed five percent (5%) of the SEV of the taxable property within the school district. An exception is provided for energy conservation improvement bonds and installment purchase agreements ("IPA"). There is a separate limitation for IPAs under Act 99 which limits a school district's total outstanding IPAs issued after July 22, 1997 to one and one-quarter percent (1 ¼%) of the taxable value of property in the school district.***

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## AUDITS 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. Investments of all school funds must be made in accordance with Section 1223 of the Revised School Code. The sinking fund money must be kept separate from other money of the school district.
- A school district that levies a sinking fund tax must annually have an independent audit conducted of the use of the sinking fund proceeds using generally accepted auditing standards.
- Section 1212 indicates that “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.”
- If the audit report indicates any money used for purposes other than those authorized by Section 1212, and the Department of Treasury concurs with that determination, a notice will be sent to the school district directing repayment and ordering the cancellation of future sinking fund levies with out voter approval. This decision may be appealed through the Department of Treasury by letter to the Local Audit and Finance Division.

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ANY  
QUESTIONS  
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