



School Funding Interim Commission

64th Montana Legislature

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TO: School Funding Interim Commission
FROM: Pad McCracken, Research Analyst
RE: Increasing INTERCAP loan utility for school districts
DATE: March 31, 2016

Julie Flynn of the Board of Investments is scheduled to present to you next week on the INTERCAP loan program and its use by schools for facilities projects, so I will not go into the workings of the program in this memo. In early February, Chairman Facey and I met with Julie to learn about the INTERCAP loan program and whether it could be better utilized by school districts in addressing facility needs. After the meeting, I reviewed the statutes governing INTERCAP and shared the following possibilities for statutory changes with Chairman Facey. These are based on my "emerging" understanding of INTERCAP and if the commission is interested in pursuing these, or other, changes to the INTERCAP program, the conversation would certainly be strengthened by input from the Board of Investments and school district representatives.

1. Amend 20-9-471(4) to allow districts to obligate funds without a vote for small construction projects like adding a modular classroom.
2. Amend 20-9-503(2)(a) to allow districts to pledge building reserve revenue for repayment of loans for 10 or 15 years rather than the current limit of 5 years.

The above sections of law are attached for your reference.

20-9-471. Issuance of obligations -- authorization -- conditions. (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

- (a) the costs of vehicles and equipment;
- (b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems, and cost-saving measures as defined in 90-4-1102;
- (c) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and
- (d) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed 15 fiscal years. For the purposes of this subsection, a "qualified energy project" means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(4) Except as provided in 20-9-502 and 20-9-503, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

- (a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;
- (b) the 20% square footage limitation may not be exceeded within any 5-year period; and
- (c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at an election held in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the guaranteed cost savings under energy performance contracts as defined in 90-4-1102.

(6) The obligation must state clearly on its face that the obligation is not secured by a pledge of the school district's taxing power but is payable from amounts in its general fund or other legally available funds.

(7) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(8) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and on any other terms and conditions that the trustees determine to be in the best interests of the district.

(9) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.

20-9-503. Budgeting, tax levy, and use of building reserve fund. (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include the authorized amount in the building reserve fund of the final budget. The county superintendent shall report the amount as the building reserve fund levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund may:

- (a) pledge the revenue for loans from the building reserve fund levy for up to 5 years. However, loan proceeds may be used only for projects authorized by 20-9-502.

(b) expend money from the fund for the purpose or purposes for which it was authorized without the specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to begin the authorized projects. The expenditures may not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest the money in accordance with 20-9-213(4). The interest earned from the investment must be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for the fund.