

Changes to Illinois School District Borrowing Powers

June 10, 2024

On June 7, Governor Pritzker signed into law House Bill 4582, Public Act 103-0591 (the “Act”). Among other items, the Act amends the School Code, the Local Government Debt Reform Act (Debt Reform Act), and the Property Tax Extension Limitation Law (PTELL).

Illinois school districts are limited to the powers expressly granted by the General Assembly. With respect to borrowing powers, school districts have received significant legislative support in recent years, including numerous case-by-case debt limit exceptions. The Act provides further changes to the statutory framework governing school debt issuance. Such changes, which are set forth and explained in this Client Alert, are expected to facilitate necessary financings and, in many cases, result in more efficient, lower cost borrowings.

The effective date of the Act is July 1, 2024.

List of Changes

Excepts taxes levied to pay school fire prevention and safety (SFPS) bonds from PTELL

SFPS bonds are issued to alter and repair existing school buildings and purchase equipment for fire prevention and safety purposes when there are insufficient funds available in a school district’s operations and maintenance fund, school facility occupation tax fund, if any, or fire prevention and safety fund. SFPS bonds must be approved by the Regional Superintendent (or, in Cook County, the Executive Director of the Intermediate Service Center) and the State Superintendent. In addition, the work must be done pursuant to an order issued by the Regional Superintendent (or, in Cook County, the Executive Director of the Intermediate Service Center).

But for the Act and notwithstanding such approvals and order, a school district subject to PTELL (commonly referred to as being “*tax-capped*”) could only issue SFPS bonds to the extent its debt service extension base (DSEB) enabled it to levy taxes to repay such SFPS bonds.

The Act removes tax extensions made to pay SFPS bonds from PTELL. DSEB availability varies greatly among school districts, and the removal of SFPS bond tax extensions from PTELL allows all school districts to issue SFPS bonds when authorized by the State to do so.

SFPS bonds remain subject to applicable debt limits and public hearing requirements of the Bond Issue Notification Act (BINA).

Excepts voter-approved bonds from debt limits

Pursuant to Section 19-1 of the School Code, the debt limit for elementary (K-8) and high school (9-12) districts is 6.9% of the equalized assessed valuation (EAV) of the district and for unit school (K-12) districts is 13.8% of the EAV of the district. Section 19-1 also includes numerous exceptions to such debt limits, including approximately 45 district-specific debt limit exceptions for voter-approved bonds.

The Act excepts all voter-approved bonds (and any bonds issued to refund or continue to refund those bonds), beginning with bonds approved at the November 2024 general election, from applicable debt limits.

Pursuant to Section 19-1(a-5) of the School Code and Section 21 of the BINA, any school district, prior to issuing referendum-approved bonds, must hold a public hearing if the school district is relying on a Section 19-1 debt limit exception. The Act does not amend such public hearing requirement. As such, all school districts, prior to issuing

voter-approved bonds, must hold a Section 19-1(a-5) public hearing in order to avail of the debt limit exception provided under the Act.

Eliminates referendum requirement for new school building construction that results in an increase in pre-kindergarten and/or kindergarten classroom space

Generally speaking, under current law, direct referendum approval is required to build or purchase a building for classroom or instructional purposes, including purchasing or constructing a building for pre-k and kindergarten programming. This general rule applies even when the school district has sufficient funds on hand and does not intend to borrow for such purchase or construction.

There are several narrow exceptions to this general rule, including financing the new building with bonds secured by County School Facility Sales Tax revenues. The Act adds one additional exception. Beginning September 1, 2024, no referendum will be required to build or purchase a building for school classroom or instructional purposes if such building or purchase will result in an increase in pre-kindergarten and/or kindergarten classroom space in the school district.

Nothing in the Act or the applicable section of the School Code (10-22.36) authorizes financings for such new school buildings. A school district must use existing borrowing alternatives available elsewhere in the School Code or in other applicable law, such as the Debt Reform Act, and the availability of such borrowing alternatives may be limited by debt limit constraints and, for tax-capped districts, DSEB constraints.

Increases maximum term of school district bonds to 30 years

Generally speaking, current law limits the maximum term of school bonds to 20 years. School districts often borrow to finance capital assets with useful lives significantly longer than 20 years, such as new buildings, gymnasiums, science labs, and classroom additions. The Act increases the maximum maturity for bonds which are issued for the purpose of purchasing, constructing, or improving real property, including voter-approved bonds, from 20 years to 30 years.

Amends various provisions of the School Code to reduce the need for “premium” bond structures

The School Code limits the par amount of SFPS bonds to the architect’s estimates of costs to bring the building or buildings up to applicable building code, which estimates must be reviewed and approved by the State. The School Code also limits the par amount of bonds issued to establish or increase the working cash fund of a school district (WCF bonds) to a statutory formula. Section 6 of the Debt Reform Act allows school districts to use bond proceeds to pay costs of issuance and/or capitalized interest but does not allow school districts to increase the principal amount of SFPS bonds or WCF bonds for such purposes. Accordingly, school districts often sell bonds at a premium price in order to generate funds to pay costs of issuance and/or capitalized interest.

The Act allows a school district to increase the principal amount of SFPS bonds and WCF bonds by an amount not to exceed 3% of the otherwise authorized amount to cover costs of issuance and/or capitalized interest. The increased principal amount of such bonds, however, must be included in the public hearing notice under the BINA and in the notice of intent for any backdoor referendum proceedings.

For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning these important changes to the borrowing powers of Illinois school districts, please contact any attorney in the Illinois Public Finance Group or visit us online at chapman.com.

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