

ED CLIPS!

School Financing During COVID-19

Ryan W. Lione

Introduction

With the recent uptick in cases of COVID-19 throughout the state, and the uncertainty around what restrictions, if any, will be in place in one month, three months, or six months from now, there is no clear consensus as to how things will look for school bond elections come the next uniform election date of November 3, 2020.

Some school districts were already intent on avoiding their bond measures being included in the November 3, 2020 election, due to the fact that it will be one of the most hotly contested presidential elections in recent history. Now, with the uncertainty surrounding COVID-19 and how that will affect voters come November, many districts are looking at either postponing their bond elections until the next uniform election date of May 1, 2021, and/or looking to secure alternate means of financing.

Alternative Financing Options

Maintenance Tax Notes & Interest-Bearing Time Warrants

Aside from issuing bonds, school districts have the option to issue Maintenance Tax Notes (“MTNs”) and Interest-Bearing Time Warrants (“TWs”) in order to obtain financing to either completely finance district improvement projects, including the purchasing of equipment, or as an interim measure of financing while awaiting a bond election at a later date. Both MTNs and TWs have several advantages over bond issues in that neither MTNs nor TWs require approval from the taxpayers of the district via public election, as is required for bonds, and thus districts are not restricted to only pursuing MTNs or TWs on the two uniform election dates offered each year, as is the case with bonds. School districts can issue MTNs or TWs at any point during the year upon the passing of a resolution approved by a majority of the district’s board of trustees at a publicly held meeting. MTNs and TWs are governed by Chapter 45 of the Texas Education Code which sets forth the permissible uses for each as well as the manner in which they must be approved and structured.¹

¹ Maintenance Tax Notes are governed by TEX. ED. CODE § 45.108 and Time Warrants by TEX. ED. CODE § 45.103.

Public Property Finance Act

Another alternative means of financing for school districts is the Public Property Finance Act (the “Act”), governed by Chapter 271 of the Texas Local Government Code.² This method of financing “promotes a public purpose by furnishing governmental agencies with a feasible means to purchase or otherwise acquire, use, and finance public property.”³

School districts have the option of purchasing either personal property or real property under the Act; however, the procedure for acquiring personal property⁴ differs substantially than the procedure for acquiring real property.⁵

Under the Act, a school district is afforded significant discretion to determine the structure of the agreement, as considered and approved by the board of trustees of the district.⁶ An agreement to acquire personal property may be in the form of a lease, a lease with an option to purchase, an installment purchase, or any other form the board of trustees decides is appropriate and in the best interests of the district,⁷ and may be made payable from all or part of any revenues, funds, or taxes available to the district for any public purpose.⁸ If the agreement provides for the payment of an aggregate amount of \$100,000 or more, the district may elect to submit the agreement to the Office of the Attorney General for examination and approval, and if so approved, for registration by the Comptroller of Public Accounts.⁹

In contrast to the procedure for the acquisition of personal property, the procedure for the acquisition of real property is longer and more arduous for the district. Prior to the board of trustees of a school district approving an agreement under the Act for the acquisition of real property, or an improvement to real property, the board must publish notice of its intent not less than 60 days prior to such meeting in a newspaper of general circulation within the district.¹⁰ Prior to the date of the board meeting to approve the agreement, at least 5% of the registered voters of the district may sign a written petition forcing the board to order a referendum as to whether the agreement should be approved, and may only move forward with the agreement if so approved by a majority of the votes in the referendum.¹¹ Further, if the agreement under the Act is structured as a lease-purchase agreement, such agreement must be submitted to and approved by the Office of the Attorney General.¹²

² TEX. LOC. GOVT. CODE §§ 271.001-271.009.

³ *Id.* at § 271.002(b).

⁴ *Id.* at § 271.003(8), stating that the term “personal property” includes appliances, equipment, facilities, and furnishings, as well as materials and labor incident to the installation of the property, including electricity, but excluding any real property.

⁵ *Id.* at § 271.003(11), stating that the term “real property” means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property.

⁶ TEX. LOC. GOVT. CODE § 271.005(a)(1).

⁷ *Id.* at § 271.005(a)(2).

⁸ *Id.* at § 271.005(a)(4).

⁹ TEX. LOC. GOVT. CODE § 271.007(a).

¹⁰ TEX. LOC. GOVT. CODE § 271.004(a).

¹¹ *Id.* at § 271.004(b).

¹² *Id.* at § 271.004(g).

Conclusion

In addition to, or in lieu of, issuing bonds, school districts in Texas have a number of alternative financing options to fully satisfy the needs of the district or to provide some interim financing while the district attempts to pass a bond election.

Any districts in need of financing for construction improvement projects or to acquire personal or real property, should consult with their legal counsel and financial advisor to determine the method of financing that best suits their needs. Additionally, any districts that are concerned about conducting a bond election on November 3, 2020, should consult with their bond counsel and financial advisor to determine whether to move forward with the election as planned or to push that election to one of the uniform election dates in 2021. The last date to order an election for the November 3, 2020 uniform election date is August 17, 2020, and therefore districts must work closely with their bond counsel and financial advisor to make this decision quickly and to timely order the election if they so choose, otherwise, the next possible date to conduct a bond election is May 1, 2021.

Powell, Youngblood & Taylor, LLP has served as bond counsel for districts all around the state and has assisted districts in obtaining financing for every kind and size of project, whether through the issuance of bonds, or through Maintenance Tax Notes, Time Warrants, Public Property Finance Act agreements, or traditional bank loans.

Please give us a call if you have any questions related to public finance in Texas.