

## DEPARTMENT OF TREASURY

### STATE TREASURER

#### SCHOOL BOND QUALIFICATION, APPROVAL, AND LOAN RULES

(By authority conferred on the state treasurer by section 11 of 2005 PA 92, MCL 388.1931, and section 33 of 1969 PA 306, MCL 24.201 to 24.328 all as amended)

#### PART 1. GENERAL DEFINITIONS

##### **R 388.1 Definitions**

Rule 1. (1) As used in these rules:

(a) "Act" means the school bond qualification, approval, and loan act, 2005 PA 92, MCL 388.1921 to 388.1939.

(b) "Business day" means any day that does not fall on a Saturday, Sunday, or state legal holiday.

(c) "Calendar day" means any day represented on the yearly calendar including Saturday, Sunday, and state legal holidays.

(d) "Debt service" means principal and interest payments on qualified bond issues and associated fees related to those bonds.

(e) "Department" means the Michigan department of treasury.

(f) "Pro forma debt service projection" has the meaning associated with it in section 5 of the act.

(g) "Qualification" means the process of qualifying bonds or loans in accordance with the act.

(h) "Refunding bond" means a bond issued to refund or refinance an existing qualified bond or outstanding qualified loan owed to the state under this act.

(i) "Repayment mode" is the loan status given to a school district whose annual tax collections exceed, or are projected in the next succeeding year to exceed, its annual debt service on qualified bonds, at which point the school district must begin repaying to the state its outstanding qualified loan balances.

(j) "State legal holiday" means those days designated in section 1 of 1865 PA 124, MCL 435.101.

(k) "Treasurer" means the Michigan state treasurer as defined by the act.

(l) All terms not defined in these rules have the same meaning as when used in the act.

History: 2007 AACCS; 2014 AACCS.

#### PART 2. SCHOOL BOND QUALIFICATION

##### **R 388.2 Preliminary qualification; application.**

Rule 2. (1) A completed preliminary qualification application shall include a submission to the department that complies with section 5 of the act, any other applicable law, and any other guidance published by the department including, but not limited to, global instructions, policies, procedures, guidelines or rules. The application shall include the following:

(a) The proposed ballot language to be submitted to the electors shall include all language required by the following statutes:

- (i) MCL 380.1361, the revised school code.
- (ii) MCL 211.24f, general property tax act.
- (iii) Section 8 of the act.
- (iv) Any other applicable law.

(b) A description of the project or projects to be financed including all of the following:

(i) A cost analysis providing summary totals that can be matched to budget estimates as reported by the school district.

(ii) For new construction, all of the following shall be included:

- (A) The estimated number of rooms.
- (B) The types of rooms expected to be constructed.
- (C) The estimated square footage of the project or projects.
- (D) The estimated cost per square foot.

(iii) For remodeling and site work, all of the following shall be included:

- (A) The planned use of the space.
- (B) The type of work expected to be performed.
- (C) The estimated total cost of the work to be performed.

(iv) For site acquisitions, the total cost of acquisition shall be included, or if such information is not available, the estimated total cost of acquisition.

(v) For technology, furnishings, and equipment, school districts shall provide detail regarding the types of technology, furnishings, and equipment to be purchased.

(c) A pro forma debt service projection, which shall demonstrate both of the following:

(i) That the projected computed millage will be sufficient to repay principal and interest on all of the school district's existing and proposed new qualified bonds plus principal and interest on all existing and anticipated qualified loans related to those bonds not later than the final mandatory repayment date.

(ii) That the school district's projected average growth in taxable value is based on the assumptions required by the act.

(d) The utilization rate for each project included in the preliminary qualification application, which meets the following specifications:

(i) The utilization rate shall be calculated by dividing the projected 5-year enrollment by the standard pupil capacity factor provided by the department.

(ii) The 5-year enrollment projection used in this calculation shall be obtained from an enrollment projection service provider approved by the department.

(iii) When the utilization rate for any building is below 60% for remodeling projects and 85% for new construction projects, the school district shall submit a written explanation of such variance discussing the actions the school district intends to take to address the underutilization.

(e) Evidence that the cost per square foot of the project or projects will be reasonable in light of economic conditions applicable to the geographic area in which the school district is located.

(f) An amortization schedule in accordance with MCL 388.1925(2)(k) and MCL 388.1927(1)(d).

(g) A completed prequalification application includes the following data, which the department shall use for informational purposes only:

(i) The total bonded debt outstanding of the school district for the school district fiscal year in which the application is filed.

(ii) The total taxable value of property in the school district for the school district fiscal year in which the application is filed.

(iii) A statement describing any environmental or usability problems to be addressed by the project or projects.

(iv) An architect's analysis of the overall condition of the facilities to be renovated or replaced as a part of the project or projects.

(v) Acknowledgement that the district will keep books and records of expenditure of bond proceeds and make this information available to the department upon request within 5 business days.

(2) The department shall determine the reasonableness of cost per square foot by comparing the cost included in the preliminary qualification application to the cost per square foot parameter announced annually by the department. The cost per square foot parameter announced annually by the department shall be calculated from data derived from reputable independent sources, including but not limited to, R.S. Means or such similar entity that provides reliable objective information.

(3) If it has been more than 12 months since the preliminary qualification was approved, then a school district shall submit the following information to update the application prior to submitting an application for final qualification:

(a) A status report of any previous series of bonds included in the authorization.

(b) Updated project sheets for each project included in the proposed series and supporting cost detail, as described in R 388.2(1)(b).

(c) A cost summary sheet for proposed bond series.

(d) An updated pro forma debt service projection showing bond structure for proposed series.

History: 2007 AACCS; 2014 AACCS.

### **R 388.3 Qualification of bonds.**

Rule 3. (1) To obtain final qualification of bonds, a school district shall, along with meeting any other requirements of section 7 of the act, submit a final qualification application and supporting documentation in the form prescribed by the department.

(2) Supporting documentation shall include all of the following:

(a) A cover letter from legal counsel indicating the requested approval date and delivery date if known at the time of submission.

(b) The certificate of determination of election results and vote count approving the bonds.

(c) An updated pro forma debt service projection.

(d) A copy of any adopted resolution authorizing the issuance of bonds.

(e) A copy of any resolution authorizing the sale of bonds if such a resolution is applicable.

(f) The preliminary or final official statement, whichever is available at the time of submission.

(g) Acknowledgement that the district will keep books and records of expenditure of bond proceeds and make this information available to the department upon request within 5 business days.

(3) Supporting documentation for refunding bond issues shall include both of the following:

(a) Additional financial schedules that document net present value savings of the refunding bond issue.

(b) A draft verification report of mathematical accuracy of the refunding tables, prepared by a reliable independent source.

(4) If a school district does not issue its qualified bonds within 180 days after the date of the order qualifying bonds, then the school district shall submit a revised application and updated pro forma debt service projection to the department.

(5) Notwithstanding the repayment requirements of these rules, all bonds qualified under the act and Article IX of the state constitution of 1963 shall be considered qualified upon issuance of the order qualifying bonds by the state treasurer until final maturity.

History: 2007 AACCS; 2014 AACCS.

#### **R 388.4 Debt service payment dates.**

Rule 4. Principal on qualified bonds shall be payable on May 1 and/or November 1, as approved by the department, and interest on qualified bonds shall be payable on May 1 and/or November 1, as approved by the department.

History: 2007 AACCS; 2014 AACCS.

#### **R 388.5 Department guidance.**

Rule 5. The department may issue any other guidance including, but not limited to, global instructions, policies, procedures, or guidelines, in accordance with the act, these rules and, state law, as needed, to assist school districts with completing prequalification and qualification applications, and otherwise with complying with the act.

History: 2007 AACCS; 2014 AACCS.

### **PART 3. SCHOOL LOAN REVOLVING FUND LOANS**

#### **R 388.6 Certification of computed millage.**

Rule 6. Subject to the act and other provisions of these rules, a school district shall authorize, agree to, and certify the levy of its full computed millage before borrowing from the school loan revolving fund.

History: 2007 AACCS; 2014 AACCS.

### **R 388.7 Rescinded.**

History: 2007 AACCS; 2014 AACCS.

### **R 388.8 Annual loan activity application.**

Rule 8. A completed annual loan activity application shall include submission to the department of all of the following:

- (a) A cover transmittal letter.
- (b) An annual loan activity application consisting of a certified resolution in the form prescribed by the department providing for all of the following:
  - (i) Designation and authorization of a school district official to complete all required and necessary documents related to the school loan revolving fund.
  - (ii) Approval of the estimated amount to be disbursed from or repaid to the school loan revolving fund.
  - (iii) Certification of the amount of qualified debt millage to be levied.
  - (iv) Agreement to take actions or refrain from taking actions, as necessary, to maintain the tax-exempt status of any bonds or notes issued by the state in accordance with the state constitution of 1963 or by the Michigan finance authority, or its successor, in accordance with the act.
- (c) An annual loan activity worksheet in a form prescribed by the department.
- (d) Copies of reconciled bank statements to support the debt fund balance reported on the annual loan activity worksheet.
- (e) Financial analysis confirming that the current computed millage or recalculated computed millage is sufficient to repay principal and interest on all qualified bonds and loans not later than the final mandatory repayment date, unless otherwise provided for in the act.
- (f) Any other documentation and information necessary to determine the amount of the disbursement or repayment.

History: 2007 AACCS; 2014 AACCS.

### **R 388.9 Worksheet/draw request; compliance with paying agent guidelines.**

Rule 9. (1) A completed draw request shall include submission to the department of all of the following:

- (a) A cover transmittal letter.
- (b) A worksheet/draw request.
- (c) Copies of reconciled bank statements to support the debt fund balance reported on worksheet/draw request.

(d) Any other documentation and information necessary to determine the amount of the disbursement.

(2) If the state or the Michigan finance authority, or its successor, issues tax exempt bonds for purposes of funding qualified loans related to qualified bonds, as defined in the act, then school districts that receive proceeds of those tax exempt bonds shall use such proceeds towards the district's qualified debt service within 5 business days of receipt.

(3) School districts participating in the school bond qualification and loan program must assist the department in complying with third party paying agent guidance as they may be called or amended. Those guidelines include, but are not limited to, the following:

(a) Transferring funds to the paying agent not later than 5 business days prior to any payment due date.

(b) Working with paying agents when a school district is notified by a paying agent that it has failed to transfer sufficient funds, which paying agents must do 4 business days prior to the debt service due date.

(c) Agreeing that, 3 business days prior to the debt service due date, paying agents will notify the department that a school district has failed to transfer sufficient funds to it.

(d) Allowing paying agents to work with delinquent school districts to ensure debt service payments are made by the due date, and to keep the department informed of the status of the payments.

(e) Allowing paying agents to coordinate a loan from the state through the school loan revolving fund to ensure timely payment of debt service, if that school district does not timely transfer sufficient funds.

History: 2007 AACCS; 2014 AACCS.

### **R 388.10 Final mandatory repayment dates for borrowing related to new bond issues.**

Rule 10. The final mandatory repayment dates for borrowing related to qualified bond issues shall be determined in accordance with the act.

History: 2007 AACCS; 2014 AACCS.

### **R 388.11 Interest rates on qualified loans.**

Rule 11. (1) All qualified loans shall bear interest as defined in section 9(8) of the act.

(2) The department shall recalculate the interest rate on all qualified loans if any of the following occur:

(a) Additional school loan bonds or school loan revolving fund bonds are issued.

(b) Existing school loan bonds or school loan revolving fund bonds are refunded.

(c) Principal payments are made on existing school loan bonds or school loan revolving fund bonds.

(d) Each time variable interest rates are adjusted on school loan bonds, or quarterly for school loan revolving fund bonds.

(3) Interest on all qualified loans shall be compounded annually on September 30.

History: 2007 AACCS; 2014 AACCS.

**R 388.12 Repayment; invoices.**

Rule 12. (1) If the revenue generated by a school district's computed millage levied in a 12-month period exceeds the debt service due on qualified bonds during that 12-month period, then the school district shall pay the difference, less a reasonable amount of funds on hand, as determined by the state treasurer, to cover minimum balance requirements or potential tax disputes, to the department as payment of the outstanding loan.

(2) The department shall issue an invoice to the school district at least once a year when the information contained in a loan activity statement demonstrates that the revenue generated by a school district's levy of the computed millage will exceed the annual debt service on the bonds.

(3) The school district shall remit the amount specified in the invoice to the department not later than the next succeeding May 15 after the dated date of the invoice.

(4) The school district shall promptly submit to the department an explanation of any difference between the invoiced payment due and the payment remitted.

History: 2007 AACCS; 2014 AACCS.

**PART 4. NONCOMPLIANCE**

**R 388.13 Noncompliance; remedies.**

Rule 13. (1) The following situations constitute noncompliance:

(a) A school district that owes the state loan repayments relating to qualified bonds fails to levy at least the computed millage upon its taxable value for debt retirement purposes for qualified bonds or qualified loans under the act.

(b) A school district fails to honor its agreement to repay a qualified loan or any installment of a qualified loan.

(c) A school district fails to file or correctly file required documentation as defined in the act or these rules.

(2) In addition to any other remedies provided by the act or other state law, in the event of noncompliance, the school district shall do all of the following as required by the department:

(a) File or correct the required documentation.

(b) Increase its debt levy in the next succeeding year to obtain the funds necessary to repay the amount of the default plus a late charge that shall be 3% of the amount due. If a school district fails to levy at least the computed millage upon its taxable value, then the school district shall increase its debt levy in the next succeeding year to obtain the amount necessary to repay the amount of the default plus a late charge that shall be 3% of the amount due even when such an increase will be higher than the computed millage.

(c) Shall pay to the state the amount of the default plus the 3% late charge together with any other amounts owed during the next tax year following the year in which the default occurred.

(3) The department shall cause state school aid not to be disbursed to the non-complying school district until arrangements for the payment of the amount in arrears are made with the department's approval.

(4) Failure of a school district to comply with application due dates or failure of a school district to process any report, application, confirmation, or repayment as required under the act or in these rules may result in 1 or both of the following:

(a) The department may issue a notification to the school board requiring a written response of remedy.

(b) The department may withhold a school district's state aid funds until the school district complies with all requirements.

(5) None of the following situations constitutes noncompliance:

(a) Taxpayer delinquencies.

(b) Failure of projected pupil or tax base growth rates to meet initial projections.

(c) Decline in the school district tax base.

History: 2007 AACCS; 2014 AACCS.

## **PART 5. REFUNDING**

### **R 388.14 Rescinded.**

History: 2007 AACCS; 2014 AACCS.

### **R 388.15 Refunding bonds.**

Rule 15. (1) Bonds issued to refund qualified bonds or outstanding qualified loans shall comply with the provisions of the act and the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) The term of the refunding bond shall be no longer than the term of the original bond issue being refunded.

(3) Qualified bonds issued to refund outstanding qualified loans shall not be issued for a term longer than the projected repayment term of the qualified loans as of the date of the refunding.

(4) The department shall consider requests to issue qualified refunding bonds to refund outstanding qualified loans, despite the school district's current or prospective computed millage equaling a level greater than the maximum levy permitted by law, and despite the school district's current inability to comply with its final mandatory repayment date, so long as the issuance of the qualified refunding bonds will not further extend the school district's anticipated repayment date of its outstanding qualified loan balance, will result in a savings, will improve the district's projected qualified loan repayment date, and otherwise complies with the act and these rules.

History: 2007 AACCS; 2014 AACCS.

## **PART 6. VARIABLE INTEREST RATE DEBT**

### **R 388.16 Variable interest rate, interest rate exchange, swap, hedge, or similar agreements.**

Rule 16. (1) School districts using variable interest rate debt or entering into interest rate exchanges, swaps, hedges or similar agreements shall do all of the following:

(a) Maintain a minimum fund balance within any applicable Internal Revenue Service regulations sufficient to limit borrowing from the school loan revolving fund to the regularly scheduled May and November borrowings.

(b) Provide supplemental schedules with current estimates of debt service payments projected for the upcoming year along with the submission of the annual loan activity application.

(c) Provide written notification to the department if changes are made to the indenture documents. If the department does not respond in writing within 30 days after receipt of the notification, then the parties may proceed with the transaction.

(2) A school district may not borrow from the school loan revolving fund to pay a termination payment or similar payment related to the termination or cancellation of an interest rate exchange or swap, hedge, or other similar agreement entered into or modified after July 20, 2005, pursuant to MCL 388.1923(3)(b).

History: 2007 AACCS.

## **PART 7. TIME COMPUTATION**

### **R 388.17 Business and calendar days.**

Rule 17. (1) Unless otherwise required by these rules, when the act, these rules, or any other guidance published by the department including, but not limited to, global instructions, policies, procedures, or guidelines refer to time periods of 7 days or less, it shall mean business days. Time periods greater than 7 days, shall mean calendar days.

(2) Pursuant to MCL 211.24f(2)(b), “year” means the 12 succeeding months starting upon and including the first anticipated levy.

History: 2007 AACCS; 2014 AACCS.

## **PART 8. APPEALS**

### **R 388.18 Appeals.**

Rule 18. (1) A school district may appeal a decision of a designated representative of the department to the state treasurer or his or her program designee directly by submitting a written request for reconsideration by the state treasurer detailing the grounds, legal or otherwise, for the request within 30 calendar days of the decision.

(2) The appeal must clearly state its nature as an appeal pursuant to this rule and must clearly identify which decision is being appealed and the rationale for reconsideration.

(3) A school district may request an appeal conference with the department as part of its request for reconsideration, where it can present and discuss materials supporting its request. Such a conference shall be scheduled within 15 days of receipt of the request.

(4) The state treasurer or his or her program designee shall issue a final determination in writing within 30 calendar days of receipt of the appeal request, or after an appeal conference is held, whichever is later.

(5) Decisions of the state treasurer or his or her program designee are final.

History: 2007 AACCS; 2014 AACCS.

## **PART 9. ANNUAL COMPUTED MILLAGE WAIVER**

### **R 388.19 Annual computed millage waiver requests.**

Rule 19. (1) The department shall consider waiver requests to levy a recalculated computed millage that is less than the computed millage stated on the applicant's most recent order qualifying bonds, but that is not lower than the computed millage rate noted on the applicant's current loan agreement in effect at the time of the request. For school districts that have issued refunding bonds subsequent to entering into a loan agreement, there may be a higher computed millage rate reflected on the most recent order qualifying bonds than on the loan agreement.

(2) Subject to subrule (3) of this rule, such waivers must be requested annually prior to June 1 each year and may be granted if all of the following statutory conditions are met:

(a) The school board of the school district has applied to the state treasurer for permission to levy a recalculated computed millage as described in subrule (1) of this rule.

(b) The application specifies the number of mills the school district requests permission to levy which shall be equal to the recalculated computed millage.

(c) The waiver will be financially beneficial to this state, the school district, or both. It is presumed that the recalculated computed millage, despite being lower than the computed millage reflected on the applicant's most recent order qualifying bonds, but not lower than the computed millage rate reflected on the applicant's current loan agreement in effect at the time of the request, meets this condition.

(d) The waiver will not reduce the millage levied by the school district to pay principal and interest on qualified bonds and/or qualified loans under the act to less than 7 mills.

(e) The board of the school district, by resolution, will agree to comply with all conditions that the state treasurer has specified in the waiver. Any conditions are

anticipated to be only those needed to address any unforeseeable circumstances unique to and presented by individual school districts. The department's approach to those circumstances will be uniform to the extent possible.

(3) Once a waiver has been approved, for each subsequent consecutive year where the recalculated computed millage is lower than the computed millage stated on the most recent order qualifying bonds for the district, the district may continue to levy the lesser recalculated computed millage as long as it is sufficient to repay all outstanding loans by the final mandatory repayment date. Board acknowledgement of the waiver continuance will be obtained during the annual loan application process required by the act and will satisfy the annual waiver request requirement.

(4) If confirmed taxable value amounts are not available prior to board certification, estimated taxable values may be used in the application. Revised financial schedules with confirmed taxable values must be submitted prior to final department approval. Complete and timely applications shall be processed not later than June 10.

(5) Waiver request forms are available on the department's website and must be submitted along with current pro forma debt service projections not later than June 1 to the appropriate contact on the department's website.

History: 2014 AACCS.

## **PART 10. USE OF REMAINING PROCEEDS**

### **R 388.20 Use of remaining proceeds.**

Rule 20. (1) School districts may only use bond proceeds remaining after the approved projects are completed to do the following:

- (a) Pay debt service on qualified bonds.
- (b) Pay qualified loans.

(2) Only under limited circumstances, and if in the opinion of the district's bond counsel, the use of remaining proceeds to pay down debt would adversely affect the tax treatment of interest on the qualified bonds, the district may use remaining bond proceeds to pay for enhancements to the projects approved by the school electors as described in the ballot language.

History: 2014 AACCS.

## **PART 11. FINAL YEAR OF REPAYMENT**

### **R 388.21 Computed millage exception for qualified bonds and qualified loans in final year of repayment.**

Rule 21. If a school district with an outstanding qualified loan balance can demonstrate to the satisfaction of the department that repayment in full of the outstanding qualified loan balance will be achieved in the school district's next fiscal year by levying a millage that is less than 7 mills, or less than the computed millage stated on the school

district's most recent order qualifying bonds or loan agreement, then the department shall not object to the school district certifying a levy for that supported lesser millage amount.

History: 2014 AACCS.

## **PART 12. EXTENSION OF FINAL MANDATORY REPAYMENT DATE**

### **R 388.22 Permissive mandatory repayment date extensions.**

Rule 22. (1) As permitted by the act, these rules, or any other guidance published by the department including, but not limited to, global instructions, policies, procedures, or guidelines, a school district may request approval from the treasurer for a later final mandatory repayment date.

(2) Requests may be granted only if the following conditions are met:

(a) The school district agrees to levy a higher millage, at a minimum of 2 mills, and as approved by the treasurer, subject to any maximum millage provided by law.

(b) The school district agrees to levy the higher millage described in subdivision (a) of this subrule for so long as the extended final mandatory repayment remains applicable.

(c) The school district agrees to revert back to the original mandatory repayment date if and when projections support that action.

(d) At the time of the request, the school district is at or within 15 years of its mandatory repayment date.

(e) At the time of the request, the school district has not previously requested such an extension for the final mandatory repayment date stated in its current loan agreement.

(f) The extension is necessary for the school district to receive preliminary or final qualification of a new money bond issue.

(g) The school district will enter repayment mode upon completion of the bond issuance described in subdivision (f) of this subrule.

(h) The final mandatory repayment date is not extended by more than 3 years.

(3) Approvals shall be documented in writing either as part of the qualification order for the bonds, or in another written communication with the school district.

History: 2014 AACCS.