

# Legal Update

## GVSBO

### GRAND VALLEY SCHOOL BUSINESS OFFICIALS

Annual Mid-Winter Conference  
March 15, 2019

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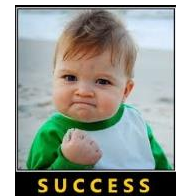
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# WHAT'S NEW ON THE CAPITAL PROJECTS FRONT?

- Need for capital projects remains strong.
- Projects continue to be mostly renovation, technology, and buses...but starting to see many new construction projects.
- Security, security, security!!
- Energy Conservation Improvements: Newer more efficient systems and renewables.
- Tax base recovery making it possible in many cases to bond with existing debt millage.
- Bonds issued in multiple series, pursuant to a single proposal.
- Interest rates still low – Michigan outlook ↑ (S&P Rating AA from AA-).



# RECENT BOND ELECTION RESULTS

Elections	School Bond Proposals	Passage Rate	With Millage Increase	Passage Rate	Without Millage Increase	Passage Rate
Nov-12	** 13	31%	9	11%	4	75%
Feb-13	13	69%	9	56%	4	100%
May-13	31	74%	21	62%	10	100%
Aug-13	6	33%	4	0%	2	100%
Sep-13	1	100%	1	100%	0	n/a
Nov-13	25	64%	17	53%	8	88%
Feb-14	9	56%	6	33%	3	100%
May-14	37	84%	26	77%	11	100%
Aug-14	7	71%	5	80%	2	50%
Nov-14	*** 13	62%	12	58%	1	100%
Feb-15	17	65%	14	57%	3	100%
May-15	30	57%	17	35%	13	85%
Aug-15	9	56%	5	40%	4	75%
Nov-15	31	74%	22	64%	9	100%
Mar-16	4	75%	4	75%	0	N/a
May-16	* 40	83%	31	77%	9	100%
Aug-16	13	62%	9	56%	4	75%
Nov-16	** 9	78%	6	83%	3	67%
May-17	29	55%	19	32%	10	100%
Aug-17	8	50%	4	25%	4	75%
Nov-17	35	74%	17	71%	18	78%
May-18	35	63%	30	60%	5	80%
Aug-18	11	82%	4	75%	7	86%
Nov-18	*** 24	75%	14	57%	10	100%
<b>Total</b>	<b>450</b>		<b>306</b>		<b>144</b>	
<b>Passed</b>	<b>306</b>	<b>68%</b>	<b>177</b>	<b>58%</b>	<b>129</b>	<b>90%</b>
*Presidential Primary    **Presidential Election    ***Gubernatorial Election source: PFM® Ann Arbor office (734) 994-9700						

# Building and Site Sinking Fund: Permissible Uses Expanded

Pre-2017 Voter Authorization	Post-2016 Voter Authorization
<ul style="list-style-type: none"> <li>• Voter Approval</li> </ul>	<ul style="list-style-type: none"> <li>• Voter Approval.</li> </ul>
<ul style="list-style-type: none"> <li>• Up to 5 mills for up to 20 years.</li> </ul>	<ul style="list-style-type: none"> <li>• Up to 3 mills for up to 10 years.</li> </ul>
<ul style="list-style-type: none"> <li>• Purchase of real estate for sites for, and the construction or repair* of, school buildings.</li> </ul>	<ul style="list-style-type: none"> <li>• Purchase of real estate for sites for, and the construction or repair* of, school buildings, for school security improvements, or for the acquisition or upgrading of technology.</li> </ul>
<ul style="list-style-type: none"> <li>• NO EQUIPMENT OR FURNISHINGS.</li> </ul>	<ul style="list-style-type: none"> <li>• NO EQUIPMENT OR FURNISHINGS OTHER THAN SCHOOL SECURITY IMPROVEMENTS AND ACQUISITION AND UPGRADING OF TECHNOLOGY.</li> </ul>
<ul style="list-style-type: none"> <li>• NO MAINTENANCE**</li> </ul>	<ul style="list-style-type: none"> <li>• NO MAINTENANCE**</li> </ul>
<ul style="list-style-type: none"> <li>• ANNUAL AUDIT</li> </ul>	<ul style="list-style-type: none"> <li>• ANNUAL AUDIT</li> </ul>

\* Repair – putting back in good condition – curative.

\*\* Maintenance – keeping in good condition – preventative.

★ Voter approval to replace existing Sinking Fund authorization?

# Operating Millage Renewal/Restoration/Replacement

- Headlee Rollbacks on the rise!
- Operating Millage Renewal, Restoration or Replacement
- Increase v. renewal.
- Requesting a Headlee Rollback cushion?

# School Election Update: Proposal 3 Amendments

## Voter Registration

Under the Proposal 3 amendments, a person is now allowed to register to vote in person or by mail without submitting proof of residency **up to and including 15 days before an election**. The Proposal 3 amendments also allow a person to register in person **up to and including the day of election if they provide proof of residency**. Under prior law a person was required to be registered at least 30 days before an election.

## Absentee Voting

The Proposal 3 amendments now allow a voter to apply for an absentee ballot **without giving a reason during the 75 day period before an election**, up to and including the day of election. It also provides that the voter may choose whether the absentee ballot is applied for, received and submitted in person or by mail.

# School Election Date Options



- ❑ A school district may submit a ballot question, such as a bond proposal, to the school electors on one of the following dates:
  - Regular election date (i.e., one of the three fixed dates)
    - First Tuesday after the first Monday in **May**;
    - First Tuesday after the first Monday in **August**;
    - First Tuesday after the first Monday in **November**.
  - A date when a city or township within the school district’s jurisdiction is holding an election; or
  - A “floater” election date.
  - The March Presidential Primary election date is also an available election date (second Tuesday in March, e.g. March 10, 2020).
- ❑ Ballot question must be submitted to the school district’s Election Coordinator no later than 4 p.m. on the twelfth Tuesday before the election date.

# Fixed Regular Election Dates

2019	2020
N/A	Tuesday, March 10, 2020*
Tuesday, May 7, 2019	Tuesday, May 5, 2020
Tuesday, August 6, 2019	Tuesday, August 4, 2020
Tuesday, November 5, 2019	Tuesday, November 3, 2020**

\* Presidential Primary

\*\*Regular School Election Date

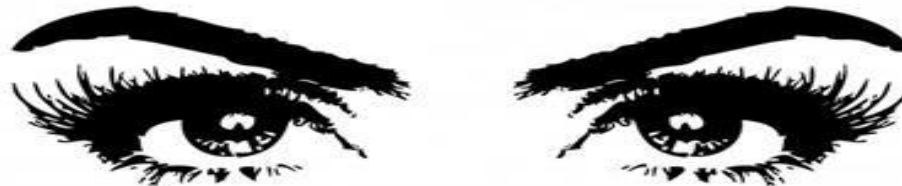


# Picking an Election Date - Considerations

- Cost.
- Turn-out/ballot fatigue/other ballot issues?
- “Stealth Election”
- Coordination with proposed project timetable.
- Partisan Election Dates

# Michigan Campaign Finance Act (“MCFA”) Update

- ❑ Recent activities by Secretary of State.
- ❑ You are being watched...
  - Educate administrative staff, including building level administrators



# Advocate? No! Inform? Yes!

- School districts are prohibited from spending public funds or using other resources for campaign activities, including the election or defeat of candidates or ballot proposals.
- School Districts cannot expressly advocate for a ballot proposal but may use its resources to inform (i.e. factual information).

Do not use language like:	However, you may say:
This will really help our kids.	The bond issue is intended to benefit every child in the district
This will benefit everyone in the district.	The bond issue is intended to benefit every child in the district.
We really need your help.	There is a lot of information available.
Critical needs.	District priorities, with Community input.

## Michigan Campaign Finance Act: Public Officials

A **Board member or Superintendent** may express his or her views on a ballot proposal at any time without using school district resources. Statements should not imply that they are expressing the viewpoint of the entire school district or its school board.

A **Board member or Superintendent's** occasional, incidental use of public resources (such as telephones, computers, offices, stationery, or postage) to communicate his or her views on a ballot proposal to constituents or the media is permissible. No email blasts or robo-calls.

A **Board member or Superintendent** may discuss a ballot proposal at a school board meeting.

A school board may adopt a resolution supporting or opposing a ballot proposal relating to the school district's educational purposes.

# SEC: Continuing Disclosure Requirements

The two new Material Events are:

- (15) Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

**The amendments apply to continuing disclosure undertakings (CDU's) for publicly offered bonds or notes which are delivered on or after February 27, 2019. Until an issuer sells debt obligations with a CDU containing the new material events, the amendments have no effect on that issuer's continuing disclosure obligations**



# New School Construction or Major Renovation: Consultation with Local Law Enforcement

**380.1264. Construction of new school building or renovation of existing school building; consultation with law enforcement agency required; "school building" defined.**

- (1) A school district, intermediate school district, or public school academy shall not commence the construction of a new school building or the major renovation of an existing school building **unless the school district, intermediate school district, or public school academy consults on the plans for the construction or major renovation regarding school safety issues with the law enforcement agency that is or will be the first responder for that school building.**
- (2) As used in this section, "school building" means either of the following:(a) A building intended to be used to provide instruction for pupils;(b) A recreational or athletic structure or field intended to be used by pupils.

# New Accountability Standards Under ESSA

- ❑ The State has transitioned to a new accountability system to measure academic performance as mandated by the Every Student Succeeds Act (“ESSA”).
- ❑ Transparency Dashboard and Michigan School Index System ( 0 to 100 index value range).
- ❑ Comprehensive Support and Improvement (“**CSI**”) Schools (lowest 5%): Targeted Support and Improvement (“**TSI**”) Schools; and Additional Targeted Support (“**ATS**”) Schools.
- ❑ Implemented beginning with the 2017-18 school year.

## New Accountability System under Recently Enacted State Law: A to F Letter Grades

- ❑ At the end of 2018 the Governor signed into law legislation which requires MDE to develop a statewide system of accountability measurements which will include A to F letter grades and other rankings.
- ❑ **CSI Schools (lowest 5%); TSI and Other Schools and Reward Schools.**
- ❑ Develop accountability Measurements by August 1, 2019 and implement by September 1, 2019; Develop achievement Standards by September 1, 2019; and Develop accountability Measures by December 1, 2019 and implement by July 1, 2020.
- ❑ Repeals State law which created the State School Reform Officer (“SRO”).
- ❑ MDE Partnership Program for CSI Schools.



## Open Meetings Act (“OMA”) Update

- Court of Appeals has recently held that a motion to go into closed session to discuss pending litigation must identify the litigation being discussed. *Vermila v Delta College Board of Trustees* (July 31, 2018).
- Court of Appeals also recently held that a township’s board engaged in a pattern of OMA infractions over the course of eight years. Violation...entering closed session by voice vote – rather than by roll-call vote and failing to provide basis for closed session. *Emsley v Lyon Charter Twp Bd of Trustees* (March 27, 2018).
- Under recently enacted School Safety legislation School boards are allowed to meet in closed session to consider security planning to address existing threats or prevent potential threats to the safety of students and staff. MCL § 15.268

# Freedom of Information Act ("FOIA") Update



## FOIA Request Sent to ORS for MPERS Information.

- FOIA exempts from public disclosure “ [i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy”.
- FOIA does specifically allow for the disclosure of school district employees’ salaries.
- Court of Appeals has previously held that public pension amounts are similar to salary information and therefore are not private information.

*Detroit Free Press v City of Southfield, 269 Mich App 275; 713 NW2d 28 (2005). The pension income amounts of police and firefighter pension recipients reflect specific governmental decisions regarding retirees’ continuing compensation for public service. Therefore, the pension amounts are more comparable to public salaries than to private assets and do not constitute private information exempt from disclosure under the FOIA, and the public interest in disclosure outweighs a public interest in nondisclosure.*

## Other Legal Developments...

- Repeal of Prevailing Wage Law.
- New limitations on affirmative use deed restrictions when selling school property.
- School Safety Legislation.
- Michigan Court of Appeals confirms that public employers may enforce zero-tolerance drug policies.
- Pending Legislation.

# Solar At Your School: Go Green! Save Green!

## ❑ What is a “Third Party” Solar Project

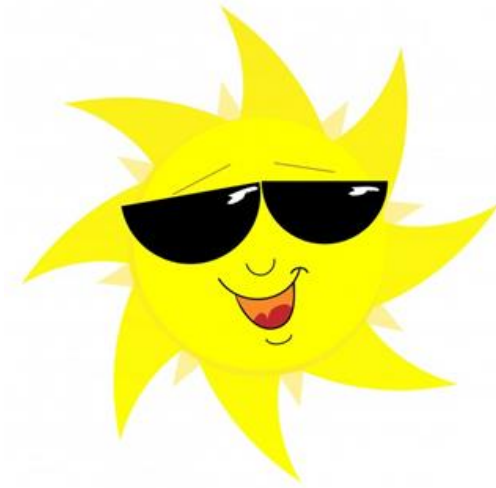
- Allows a School District to purchase power at a stated rate for a specified term
- No up front investment from the District
- Savings due to lower cost for electricity
- District uses green or renewable power

## ❑ Why Third Party Financing

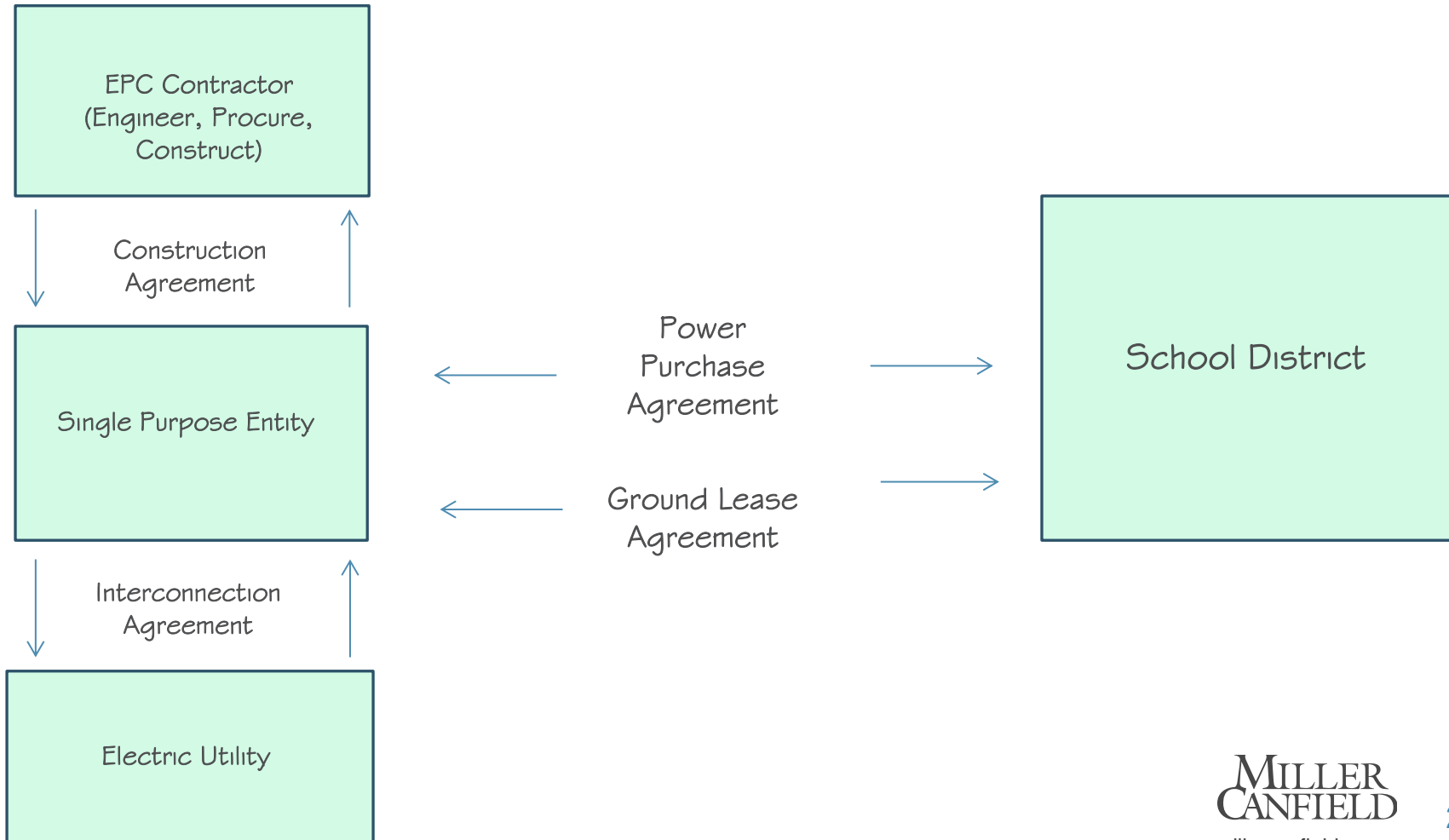
- Solar Investment Tax Credit
- Michigan Renewable Energy Credits

## ❑ Who are the parties to a Third Party Solar Project

- The Offtaker of the power (School District)
- The Solar Developer/Investor
- Engineer, Procure, Construct (“EPC”) Contractor
- Electric Utility



# Third Party Solar Project Financing Structure



# Solar Program: Documentation

- ❑ Power Purchase Agreement
  - Rate for power and term
  - Risk of production
  - Operation and maintenance
  - Responsibility for regulatory and interconnection issues
  - RECs and other credits
  - Indemnification
  - Buyout of the system
  - Removal of the system
- ❑ Site Lease Agreement
- ❑ Construction Agreement
- ❑ Interconnection Agreement



# Solar Program: Additional Issues

- ❑ Interconnectivity with Electric Utility
- ❑ Private Activity/Use of Bond Financed Facilities
- ❑ Zoning
- ❑ Property Taxes



# Ian F. Koffler

Ian F. Koffler  
Principal



Bond Counsel to the State of Michigan and various State of Michigan authorities including the State Building Authority and Michigan Finance Authority, Ian works extensively on the School Aid Note Program, Clean Water Revolving Fund Loan Program, Drinking Water Revolving Fund Loan Program, and Local Government Loan Program.

Additionally, Ian advises local governments issuing debt obligations to meet their capital acquisition needs and routinely represents underwriters, banks, leasing companies and other institutions purchasing municipal debt obligations.

He also has experience assisting private sector clients, such as non-profits, healthcare organizations and manufacturers pursuing tax-exempt conduit financings, allowing these organizations to take advantage of tax-exempt interest rates at typically a much lower cost than conventional methods of financing.

Prior to joining Miller Canfield, Ian spent ten years assisting public finance clients for law firms in his native Kentucky.

## SERVICES

- > Public Finance
- > Airports
- > Cash Flow and Working Capital
- > Development
- > Education Finance
  - > Higher Education
  - > K-12
- > Governmental Facilities and Equipment
- > Higher Education
- > Hospitals and Other Nonprofits
- > Infrastructure
  - > Drains
  - > Pooled Financings
  - > Roads, Highways and Public Transportation
  - > Solid Waste Management
  - > Utilities
- > Public-Private Partnerships

## EDUCATION

University of Kentucky College of Law, J.D. 2004

University of Kentucky, M.P.A. 2001

University of Richmond, B.A. 1999

## BAR ADMISSIONS

- > Kentucky
- > Michigan



# James M. Crowley

James Crowley  
Principal



Jim Crowley is a member of the Firm's Public Finance Practice Group and concentrates his practice in the areas of school finance, election and general school business law.

Jim has extensive experience in school finance and regularly serves as bond counsel, note counsel and disclosure counsel for public schools, public school academies, and other issuers. In these capacities, he has served as counsel relating to general obligation, unlimited and limited tax bond financings, energy conservation project financings, tax-credit bond financings, installment purchase agreements, finance leases and operating cash-flow borrowings including state aid notes, tax anticipation notes, and lines of credit.

In addition to serving as bond and note counsel in school financing transactions, Jim also focuses on such areas as elections, campaign finance compliance, state and federal tax issues, general school finance (budgets, revenue sources and cash flow), general school business matters and employee benefits.

With respect to school elections, Jim has extensive experience with elections for school bond, operating tax (i.e. renewals, increases and Headlee restorations) and sinking fund proposals.

Jim regularly assists public schools with the establishment and maintenance of tax-exempt organizations which include educational foundations, boosters clubs and other organizations affiliated with the public school.

## SERVICES

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- > Education Finance
  - > K-12
  - > Higher Education
- > Higher Education
- > Related Government Services
  - > Educational Services
  - > Elections and Campaigns
  - > IRS Audit Service and Arbitrage
  - > Millage Planning

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Michigan State University, B.A.  
Accounting, 1981

Wayne State University, J.D., 1984

## BAR ADMISSIONS

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- > Michigan

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# Thank you! Any Questions?

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

