

## CHAPTER 11

### CASH AND DEBT MANAGEMENT

#### Bankruptcy

A city, county, or other political subdivision of this state shall not be a debtor under chapter 9 of the federal Bankruptcy Code, 11 USC section 901 et seq., except as otherwise specifically provided in chapter 76 of the Iowa Code **(76.16)**.

A city, county, or other political subdivision may become a debtor under chapter 9 of the federal Bankruptcy Code, 11 USC section 901 et seq., if it is rendered insolvent, as defined in 11 USC section 101(32)(c), as a result of a debt involuntarily incurred. As used herein, debt means an obligation to pay money, other than pursuant to a valid and binding collective bargaining agreement or previously authorized bond issue, as to which the governing body of the city, county or other political subdivision has made a specific finding set forth in a duly adopted resolution of each of the following:

1. That all or a portion of such obligation will not be paid from available insurance proceeds and must be paid from an increase in general tax levy.
2. That such increase in the general tax levy will result in a severe, adverse impact on the ability of the city, county, or political subdivision to exercise the powers granted to it under applicable law, including without limitation providing necessary services and promoting economic development.
3. That as a result of such obligation, the city, county, or other political subdivision is unable to pay its debts as they become due.
4. That the debt is not an obligation to pay money to a city, county, entity organized pursuant to chapter 28E, or other political subdivision **(76.16A)**.

#### Cash Management

##### Investments

A depository means a bank or a credit union in which public funds are deposited under Iowa Code chapter 12C **(12C.1(2)(c))**.

Public funds and public deposits mean the moneys of a school corporation, moneys of a legal or administrative entity created pursuant to chapter 28E, and moneys placed in a depository for the purpose of completing an electronic financial transaction **(12C.1(2)“e”)**. Ambiguities in the application of section 12C.1 shall be resolved in favor of preventing the loss of public funds on deposit in a depository **(12C.1(4))**.

A school corporation governing body may delegate its investment authority, under the provisions of Iowa Code chapter 12C, to the treasurer or other financial officer of the governmental unit, who shall thereafter be responsible for handling investment transactions until such delegation of authority is revoked **(12C.11)**. A school district has two financial officers; one is the secretary and the other is the treasurer.

A depository may make reasonable service charges with respect to the handling of public funds, but the service charges shall not be greater than the depository customarily requires from other depositors for similar services **(12C.12)**.

The board of directors and the designated financial officers are not liable for loss of funds by reason of the insolvency of the depository institution when the funds have been deposited or invested as provided in chapter 12C **(12C.8)**.

Pending audit and allowance of claims under section 279.29, the board shall invest moneys of the corporation to the extent practicable, and the board may provide for the joint investment of moneys with one or more school corporations pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law **(279.29)**.

In addition to investment standards and requirements otherwise provided by law, the treasurers shall comply with section 12B.10, except where otherwise provided by another statute specifically referring to section 12B.10 **(12B.10(1)“a”)**.

The treasurers shall at all times keep funds coming into their possession as public money in the vault or safe to be provided for that purpose or in one or more depositories approved by the board. However, the treasurer shall invest,

unless otherwise provided by Code, any public funds not currently needed in investment authorized by section 12B.10 **(12B.10(1)"b")**).

The treasurer, when investing or depositing public funds, shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the goals of Iowa Code 12B.10(2). This standard requires that when making investment decisions, a public entity shall consider the role that the investment or deposit plays within the portfolio of assets of the public entity and the goals of 12B.10(2). The primary goals of investment prudence shall be based on the following order of priority:

1. Safety of principal is the first priority.
2. Maintaining the necessary liquidity to match expected liabilities is the second priority.
3. Obtaining a reasonable return is the third priority **(12B.10(2))**.

Investments of public funds shall be made in accordance with written policies. A written investment policy shall address the goals set out above and shall also address, but is not limited to, compliance with state law, diversification, maturity, quality, and capability of investment management. The trading of securities in which any public funds are invested for the purpose of speculation and the realization of short-term trading profits is prohibited. Investments by a political subdivision must have maturities that are consistent with the needs and use of that political subdivision or agency **(12B.10(3))**.

The investment of public funds which are operating funds by a political subdivision shall be subject to the following:

1. Operating funds means those funds which are reasonably expected to be expended during a current budget year or within fifteen [15] months of receipt.
2. Operating funds must be identified and distinguished from all other funds available for investment.
3. Operating funds may only be invested in investments which mature within three hundred ninety-seven [397] days or less and which are authorized by law for the investing public entity **(12B.10A(1))**.

All investments of public funds by political subdivisions shall be subject to the following:

- a. Each investment must be authorized by applicable law and the written investment policy of the political subdivision.
- b. Each political subdivision whose investments involve the use of a public funds custodial agreement, as defined in section 12B.10C, shall comply with rules adopted pursuant to section 12B.10C relating to those investments. All contracts providing for the investment of public funds shall be in writing and shall contain a provision requiring that all investments shall be made in accordance with the laws of this state.
- c. A contract for the investment or deposit of public funds shall not provide for compensation of an agent or fiduciary based upon investment performance **(12B.10A(2))**.

A treasurer of a political subdivision may invest funds of the political subdivision or agency that are not operating funds in investments having maturities longer than three hundred and ninety-seven [397] days **(12B.10A(3))**.

At the time of any examination of or at the time of any settlement with the treasurer in charge of any public funds, the treasurer is not required to produce and count in the presence of the officer or officers making such examination or settlement, unless otherwise requested by the board, all moneys or funds then on deposit in the safe or vault in the treasurer's office. The treasurer shall produce a statement of all money or funds on deposit with any depository wherein the treasurer is authorized to deposit such funds, and shall correctly show the balance remaining on deposit in such depository at the close of business on the day preceding the day of such settlement. The treasurer shall also file a statement setting forth the numbers, dates, and amounts of all outstanding checks, or other items of difference, reconciling the balance as shown by the treasurer's books with those of the depositories **(12B.11)**.

It shall be the duty of the officer or officers making such settlement to see that the amount of securities and money produced and counted, together with the amounts so certified by the legally designated depositories, agrees with the balance with which such treasurer should be charged, and the officer shall make a report in writing of any such settlement or examination, and attach thereto the certified statement of all such depositories **(12B.12)**.

Any officer or other person making a false statement or report or in any manner violating any of the provisions of sections 12B.10 to 12B.13 shall be guilty of a fraudulent practice **(12B.14)**.

If any auditor or treasurer or other officer shall neglect or refuse to perform any act or duty specifically required of the officer, such officer shall be guilty of a simple misdemeanor, and the officer and the officer's surety shall be liable on the official bond for any fine imposed, and for the damages sustained by any person through such neglect or refusal **(12B.15)**.

All funds held by the following officers or institutions shall be deposited in one or more depositories first approved by the appropriate government body as indicated: for a school corporation, the board of school directors. However, the treasurer of each political subdivision (school corporation) shall invest all funds not needed for current operating expenses in time certificates of deposit in approved depositories pursuant to chapter 12C or in investments permitted by section 12B.10. The list of public depositories and the amounts severally deposited in the depositories are matters of public record **(12C.1(1))**.

The approval of a financial institution as a depository of public funds for a public body shall be by written resolution or order which shall be entered of record in the minutes of the approving board, and that shall distinctly name each depository approved, and specify the maximum amount that may be kept on deposit in each depository **(12C.2)**.

Deposits by a school treasurer or school secretary shall be in depositories located within this state which shall be selected by the board of directors of the school district. However, deposits may be made in depositories outside of Iowa for the purpose of paying principal and interest on bonded indebtedness when the deposit is made not more than ten [10] days before the date the principal or interest becomes due. Deposits made for the purpose of completing an electronic financial transaction pursuant to section 8B.32 or 331.427 may be made in any depository located in this state **(12C.4)**.

County treasurers are required to make separate direct deposits into the funds if the school board designates a separate [bank] account for such funds **(OAG #82-8-15(L))**.

If the approved depositories will not accept the deposits under the conditions prescribed or authorized in chapter 12C, the funds may be deposited, on the same or better terms as were offered to the depositories, in one or more approved depositories conveniently located within the state **(12C.5)**.

Public deposits shall be deposited with reasonable promptness in a depository legally designated as depository for the funds **(12C.6(1))**.

Public funds invested in depositories' time certificates of deposit by a public body or officer other than the treasurer of state shall draw interest at rates to be determined by the public body or officer and the depository, which rates shall not be less than the minimum rate set under section 12C.6 for state funds **(12C.6(3))**.

A depository may pay interest to a public officer on deposits of public funds, and a public officer may take or receive interest on deposits of public funds **(12C.7(1))**.

Interest or earnings on investments and time deposits shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law. Funds so excepted shall receive credit for interest or earnings derived from such investments or time deposits made from such funds **(12C.7(2))**.

An officer who is referred to in section 12C.1 is not liable for loss of funds by reason of the insolvency of the depository institution when the funds have been deposited or invested as provided in chapter 12C **(12C.8)**.

The board, who by law have control of any fund created by direct vote of the people, may invest any portion of the fund not currently needed, in investments authorized in Iowa Code section 12B.10 **(12C.10)**.

There is no statutory authority for the voters to vote a tax to create a fund to be used solely for investment purposes **(OAG #74-4-23)**.

The treasurer or other designated financial officer of each school corporation shall invest the proceeds of notes, bonds, refunding bonds, and other evidences of indebtedness, and funds being accumulated for the payment of principal and interest or reserves in investments set out in section 12B.10(4)"a"(1) through (9), section 12B.10(5)"a"(1) through (7), an investment contract, or tax-exempt bonds. The investment shall be as defined and permitted by section 148 of the Internal Revenue Code (IRC) and applicable regulations under that section. An investment contract, or tax-exempt bonds shall be rated within the two (2) highest classifications as established by at least one (1) of the standard rating services approved by the superintendent of banking by rule **(12C.9(1))**. Earnings and interest from these investments shall be used to pay the principal or interest as the principal or interest comes due on the indebtedness or to fund the construction of the project for which the indebtedness was issued, or shall be credited to the capital project fund for which the indebtedness was issued **(12C.9(2))**.

Public funds of the state shall not be deposited in a financial institution which does not demonstrate a commitment to serve the needs of the local community in which it is chartered to do business, including the needs of neighborhoods,

rural areas, and small businesses in communities served by the financial institution. These needs included credit services as well as deposit services **(12C.6A(1))**.

A deposit of public funds in a depository pursuant to chapter 12C shall be secured as follows:

- a. If a depository is a credit union, then public deposits in the credit union shall be secured pursuant to sections 12C.16 through 12C.19 and sections 12C.23 and 12C.24.
- b. If a depository is a bank, public deposits in the bank shall be secured pursuant to sections 12C.23A and 12C.24 **(12C.1(3))**.

A local government shall not require a pledge of collateral for that portion of the local government's deposits in a credit union that is covered by insurance of a federal agency or instrumentality **(12C.15)**.

Notwithstanding chapter 524, the deposit of public funds in a credit union defined in section 533.102 or a mutual corporation as defined in section 524.103 does not constitute being a shareholder, stockholder, or owner of a corporation in violation of Article VIII of the Constitution of the State of Iowa or any other provision of law **(12C.13)**.

## **Debt Management**

### **Advanced Funding Authority**

The Iowa advance funding authority is a public instrumentality and agency of the state exercising public and essential governmental functions, established for the purposes of reducing the cash flow difficulties faced by Iowa schools, improving the financial procedures of Iowa schools, and reducing the short-term borrowing costs of Iowa schools **(257C.4)**.

“School” includes each public school district, AEA, and community college **(257C.3(5))**.

The general assembly finds:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa and the improvement of the financing procedures for Iowa's schools.
2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by chapter 257C.
3. Iowa schools face a serious and increasing problem with cash flow difficulties caused, among other factors, by increasing reliance on state school foundation aid, delays in the payment of state school foundation aid, and the periodic payment of property taxes for school purposes.
4. As a result of their increasing cash flow difficulties, Iowa schools have had to borrow on a short-term basis larger amounts of funds more often, thus increasing their borrowing costs significantly.
5. The short-term borrowing costs of Iowa schools are a direct burden on the taxpayers of the state.
6. It is necessary to create the authority to provide a means for Iowa schools to reduce substantially or eliminate their short-term borrowing costs and thus reduce costs to the taxpayers.
7. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted **(257C.2)**.

Members of the authority board and persons acting in the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties given in chapter 257C **(257C.11)**.

Governing board:

1. The powers of the authority are vested in and exercised by a board consisting of five members, including the treasurer of state, the director of the department of education, and the director of the department of management, and two members appointed by the governor, subject to confirmation by the senate. The state officials may designate representatives to serve on the board for them. As far as possible, the governor shall appoint members who are knowledgeable or experienced in the school systems of this state or in finance.
2. The governor shall appoint the members of the authority for terms of six years, beginning and ending as provided in section 69.19. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing are expressly waived in writing by the member.
3. Three members of the board constitute a quorum.

4. The appointed members of the authority receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.
5. The appointed members of the authority shall give bond as required for public officers in chapter 64.
6. Meetings of the authority shall be held at the call of the chairperson or when a majority of the members so request.
7. The members shall elect a chairperson, vice chairperson and secretary annually, and other officers as they determine necessary **(257C.5)**.

Advance Funding Program:

1. The authority shall establish a statewide advance funding program for the purchase from schools of notes issued in anticipation of the receipt of moneys for school purposes or for making loans to schools to alleviate cash flow difficulties and to otherwise improve the financial well-being of the schools.
2. The authority may issue its bonds and use the proceeds from the bonds for the purpose of making loans to or purchasing the notes of any school for the use of the various funds of the school for any lawful school purpose excluding debt service. Bonds issued pursuant to this section may be secured by a pledge of payments made to the authority by the school, to be derived from the receipt of anticipated funds evidenced by the notes of the school, including a pooling of payments of notes from two or more participating schools. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds.
3. The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds, the establishment of reserves to secure its bonds, the costs of issuance of its bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its purposes and powers. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code, chapter 554.
4. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the authority and are not an indebtedness of this state, and this state is not liable on the bonds. Bonds issued under chapter 257C shall contain on their face a statement that the state is not liable.
5. The proceeds of bonds issued by the authority and not required for immediate disbursement may be invested in any investment approved by the board and specified in the trust indenture or resolution pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.
6. The bonds of the authority shall be:
  - a. In a form, issued in denominations, executed in a manner and payable over terms and with rights of redemption, as the board prescribes in the resolution authorizing their issuance.
  - b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the board. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance.
  - c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with chapter 257C and as determined by resolution of the board.
7. The bonds of the authority are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.
8. Bonds must be authorized by a resolution of the board. However, a resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds by an appropriate certificate of the authorized officer **(257C.8)**.

A school may issue and sell or pledge its notes to the authority or the authority's designated agent or trustee. Schools may enter into contracts and agreements with the authority to effectuate the purposes of this chapter. In acting pursuant to this section, schools are exempt from all laws of the state which provide for competitive bids and hearings in connection with such sales, pledges, contracts and agreements **(257C.16)**.

## Stamping Warrants

Chapter 74 applies to all warrants which are legally drawn on a public treasury and which, when presented for payment, are not paid for want of funds **(74.1(1))**.

If a warrant other than an anticipatory warrant is presented for payment, and is not paid for want of funds, or is only partially paid, the treasurer shall endorse the fact thereon, with the date of presentation, and sign the endorsement, and thereafter the warrant or the balance due thereon, shall bear interest at the rate specified in section 74A.2 **(74.2)**.

When a fund contains sufficient money to pay one or more interest-bearing obligations which are outstanding against the fund, the treasurer shall call those obligations for payment. Obligations may be paid in the order of presentation. This section does not authorize a fixed-term obligation to be called at a date earlier than is provided by the conditions and terms upon which it was issued **(74.5)**.

The treasurer shall keep a record of each interest-bearing obligation which shall show the number and amount, the date interest commences, the rate of interest, and the name and post office address of the holder of the obligation **(74.3)**.

Interest on an interest-bearing obligation shall cease to accrue as of the date specified in the notice of call issued. This does not apply if the parties have otherwise agreed in writing **(74.6)**.

When an obligation which legally draws interest is paid, the treasurer shall endorse upon it the date of payment, and the amount of interest paid. The treasurer shall enter into the records maintained under section 74.3 the date of payment and the amount of interest paid **(74.7)**.

A warrant not paid upon presentation for want of funds bears interest on unpaid balances at the rate in effect at the time the warrant is first presented for payment, as established by rule pursuant to subsection 74A.6(2). This section does not apply to an obligation which by law bears interest from the time it is issued **(74A.2)**.

The interest rates authorized by section 74A.3 to be set by the issuing governmental body or agency shall be set in each instance by the governing body which, in accordance with applicable provisions of law then in effect, authorizes the issuance of the bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness **(74A.3(2))**.

The committee [treasurer of state, superintendent of banking, superintendent of credit unions, and auditor of state or a designee] shall establish the maximum interest rate to be applicable to obligations referred to in section 74A.2, and this rate shall apply unless the parties agree to a lesser interest rate **(74A.6(2))**.

The committee from time to time shall establish one or more of the interest rates referred to in subsections 2 and 3 as may be financing of governmental activities, and to minimize interest costs to governmental bodies while permitting a fair return to persons whose funds are used to finance governmental activities. The committee shall consider relevant indices of actual interest rates in the economy when establishing rates under this section, including but not necessarily limited to maximum lawful interest rates payable by depository financial institutions on customer deposits, interest rates payable on obligations issued by the United States government, and interest rates payable on obligations issued by governmental bodies other than those of this state **(74A.6(4))**. An interest rate established by the committee under this section shall be in effect commencing on the eighth calendar day following the day the rate is established and until a new rate is established and takes effect **(74A.6(5))**.

An interest rate limit, provision that no interest rate limit exists, or authorization to set interest rates, as provided by this chapter or any other law, applies to all bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness issued and delivered after the effective date of the provision, regardless of whether the bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness were authorized to be issued pursuant to election, public hearing, or otherwise before the effective date of the provision. This section operates both retroactively and prospectively **(74A.8)**.

Warrants may be stamped or anticipatory warrants issued while funds are invested if the investments were made in good faith and without negligence **(OAG #81-12-4)**.

A district can stamp warrants when money is tied up in closed banks **(AG Report 1932, p. 265)**.

The treasurer should make pro rata payments on warrants not paid for want of funds **(AG Report 1934, pp. 224, 248)**.

Stamped warrants should be paid in the order of their date of stamping when sufficient money is on hand **(1934 Op. Att'y Gen. 435 (#34-1-9))**.

When stamped warrants are partially paid and a new warrant is issued for the balance, the new warrant should take precedence over other stamped warrants issued subsequent to the date of the original **(1912 Op. Att'y Gen. 732 (#12-7-9))**.

When a district knows that it does not have sufficient funds to pay warrants, for example, payroll, it must still issue the individual warrants and have each one stamped. It cannot issue one warrant from the general fund to a payroll account and stamp just that one warrant **(OAG #64-2-28)**. [Note: where this opinion uses the word "warrant" it means "checks" in modern procedures.]

A school district may not give promissory notes nor may it issue warrants to borrow money for current operating expenses in excess of the budget estimate **(1948 Op. Att’y Gen. 5 (#47-1-6))**.

Stamped warrants may be issued against the schoolhouse fund when an issue has been voted **(OAG #39-5-19)**. [Note: schoolhouse fund as used here includes the tax funds PPEL, PERL, and Debt Service.]

A levy authorized by the board may not be anticipated by issuing stamped warrants against the levy authorized **(OAG #50-7-3)**. A district cannot anticipate the collection until the tax has actually been levied **(OAG #58-8-1)**.

## **Anticipatory Warrants**

Chapter 74 applies when a municipality (school district) determines that there are not or will not be sufficient funds on hand to pay the legal obligations of a fund, it may provide for the payment of such an obligation by drawing an anticipatory warrant payable to a bank or other business entity authorized by law to loan money in an amount legally available and believed to be sufficient to cover the anticipated deficiency **(74.1(2))**. The procedures in chapter 74 also apply to the issuance of warrants or the issuance of anticipatory warrants of an AEA established under chapter 273 **(74.1(5))**. AEA boards are authorized to issue warrants and anticipatory warrants pursuant to chapter 74. This shall not be construed to authorized an AEA board to levy a tax **(273.3(17))**.

An anticipatory warrant issued under the authority of section 74.1(1) shall bear interest at a rate determined by the issuing governmental body, but not exceeding that permitted by chapter 74A **(74.2)**.

When a fund contains sufficient money to pay one or more interest-bearing obligations which are outstanding against the fund, the treasurer shall call those obligations for payment. Obligations may be paid in the order of presentation. This section does not authorize a fixed-term obligation to be called at a date earlier than is provided by the conditions and terms upon which it was issued **(74.5)**.

The treasurer shall keep a record of each interest-bearing obligation which shall show the number and amount, the date interest commences, the rate of interest, and the name and post office address of the holder of the obligation **(74.3)**.

Interest on an interest-bearing obligation shall cease to accrue as of the date specified in the notice of call issued. This does not apply if the parties have otherwise agreed in writing **(74.6)**.

When an obligation which legally draws interest is paid, the treasurer shall endorse upon it the date of payment, and the amount of interest paid. The treasurer shall enter into the records maintained under section 74.3 the date of payment and the amount of interest paid **(74.7)**.

Each public issuer of warrants may designate the warrants as tax-exempt public warrants if the issuer complies with the tax-exempt reporting requirements of the federal Internal Revenue Code (IRC) **(74.8)**.

In the event a school corporation which has issued anticipatory warrants fails to pay principal or interest of its anticipatory warrants when due, upon certification by the trustee or the paying agent designated pursuant to section 76.10 to the director of the department of administrative services, the director of the department of administrative services shall withhold and directly apply, from any state appropriation to which the school corporation is entitled, so much as is certified to the trustee or the paying agent to the payment of the principal and interest on the anticipatory warrants of the school corporation then due. The obligation of the director of the department of administrative services to withhold and directly apply moneys from any state appropriation to which the school corporation is entitled does not create any moral or legal obligations of the state to pay, when due, the principal and interest on the anticipatory warrants of a school corporation. All appropriations for school corporations shall be subject to the provisions of this section **(74.9)**.

A warrant not paid upon presentation for want of funds bears interest on unpaid balances at the rate in effect at the time the warrant is first presented for payment, as established by rule pursuant to subsection 74A.6(2). This section does not apply to an obligation which by law bears interest from the time it is issued **(74A.2)**.

The interest rates authorized by section 74A.3 to be set by the issuing governmental body or agency shall be set in each instance by the governing body which, in accordance with applicable provisions of law then in effect, authorizes the issuance of the bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness **(74A.3(2))**.

The committee [treasurer of state, superintendent of banking, superintendent of credit unions, and auditor of state or a designee] shall establish the maximum interest rate to be applicable to obligations referred to in section 74A.2, and this rate shall apply unless the parties agree to a lesser interest rate **(74A.6(2))**.

The committee from time to time shall establish one or more of the interest rates referred to in subsections 2 and 3 as may be financing of governmental activities, and to minimize interest costs to governmental bodies while permitting a fair return to persons whose funds are used to finance governmental activities. The committee shall consider relevant indices of actual interest rates in the economy when establishing rates under this section, including but not necessarily limited to maximum lawful interest rates payable by depository financial institutions on customer deposits, interest rates payable on obligations issued by the United States government, and interest rates payable on obligations issued by governmental bodies other than those of this state **(74A.6(4))**. An interest rate established by the committee under this section shall be in effect commencing on the eighth calendar day following the day the rate is established and until a new rate is established and takes effect **(74A.6(5))**.

An interest rate limit, provision that no interest rate limit exists, or authorization to set interest rates, as provided by this chapter or any other law, applies to all bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness issued and delivered after the effective date of the provision, regardless of whether the bonds, warrants, pledge orders, certificates, obligations, or other evidences of indebtedness were authorized to be issued pursuant to election, public hearing, or otherwise before the effective date of the provision. This section operates both retroactively and prospectively **(74A.8)**.

School district warrants:

1. The treasurer of a school district shall sell anticipatory warrants authorized by subsection 74.1(2) at a rate of interest to be determined by the board of the school district.
2. The treasurer may offer the warrants for public sale at par, by publishing notice of the sale for two consecutive weeks in a newspaper of general circulation in the jurisdiction of the school district issuing the warrants, giving not less than ten [10] days' notice of the time and place of the sale. The notice shall include a statement of the amount of the warrants offered for sale.
3. Sealed bids may be received at any time up to the time all bids are opened. The treasurer shall sell the warrants to the bidder offering the lowest interest rate, provided that the treasurer may reject all bids and readvertise the sale of the warrants pursuant to the provisions of this section.
4. This section applies only to school districts whose anticipated receipts allocable to the current budget are at least equal to their legally approved budget for the current year **(74A.7)**.

Warrants may be stamped or anticipatory warrants issued while funds are invested if the investments were made in good faith and without negligence **(OAG #81-12-4)**.

A school district may not give promissory notes nor may it issue warrants to borrow money for current operating expenses in excess of the budget estimate **(1948 Op. Att'y Gen. 5 (#47-1-6))**.

A district cannot anticipate the collection until the tax has actually been levied **(OAG #58-8-1)**.

## **Bonded Indebtedness**

### **Authorization to Issue General Obligation Bonds**

School boards shall not incur original indebtedness by the issuance of bonds until authorized by the voters of the school corporation **(274.2)**. School bonds may not be lawfully issued for any purpose other than those authorized by statute **(1906 Op. Att'y Gen. 419 (#5-8-10))**.

The board of directors of any school corporation when authorized by the voters at an election held on a date specified in section 39.2(4)"c", may issue the negotiable, interest-bearing school bonds of the corporation for borrowing money for any or all of the following purposes:

1. To acquire sites for school purposes.
2. To erect, complete, or improve buildings authorized for school purposes.
3. To acquire equipment for schools, sites, and buildings **(298.21)**.

Subject to the approval of the voters thereof, school districts are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to defray the cost of purchasing, building, furnishing, reconstructing, repairing, improving or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, fieldhouse, school bus garage, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a

site already owned for an athletic field, and for any one or more of such purposes. Taxes for the payment of the bonds shall be levied in accordance with chapter 76, and the bonds shall mature within a period not exceeding twenty [20] years from date of issue, shall bear interest at a rate or rates not exceeding that permitted by chapter 74A and shall be of such form as the board of directors of the school district shall by resolution provide, but the aggregate indebtedness of any school district shall not exceed five percent [5%] of the actual value of the taxable property within said school district, as ascertained by the last preceding state and county tax lists **(296.1)**.

No county, or other political or municipal corporation shall be allowed to become indebted in any manner, or for any purpose, to an amount, in the aggregate, exceeding five per centum on the value of the taxable property within such county or corporation — to be ascertained by the last state and county tax lists, previous to the incurring of such indebtedness **(Constitution of the State of Iowa, Article XI, Section 3)**.

The five percent [5%] limit is referred to as the “Statutory Debt Limit.” For example, a school district has an actual valuation of \$50,000,000 as ascertained by the latest summation made by the county auditor and provided to the Department of Management, and an outstanding debt of \$750,000. Under these circumstances, the maximum amount of bonds that could be voted is determined as follows:

	\$50,000,000	Actual Valuation before Rollbacks Including TIF
x	5%	Legal Bonding Rate (5% = .05)
=	\$ 2,500,000	Bonding Limit
-	750,000	Outstanding Debt
=	\$ 1,750,000	Amount for Which Bonds Could Be Voted

The law is unclear on whether the actual valuation before rollbacks and TIF valuation should be before or after reduction for military credit. Governmental entities generally hold that it should be calculated after the reduction because military credit does not represent taxable base.

Before indebtedness can be contracted in excess of one and one-quarter percent [1.25%] of the assessed value of the taxable property, a petition signed by a number equal to twenty-five percent [25%] of those voting at the last election of school officials shall be filed with the president of the board of directors, asking that an election be called, stating the amount of bonds proposed to be issued and the purpose or purposes for which the indebtedness is to be created, and that the purpose or purposes cannot be accomplished within the limit of one and one-quarter percent [1.25%] of the valuation. The petition may request the calling of an election on one or more propositions and a proposition may include one or more purposes **(296.2)**.

Loans to a school district by the Department of Economic Development under the Community and Rural Development Loan Program (CORDLAP) are indebtedness for purposes of the debt limitation provision in the Iowa Constitution **(OAG #89-5-6)**.

If money is on hand to pay principal and interest due yearly on bonds, this may be considered as paid in determining the maximum that could be bonded for buildings and site **(OAG #46-1-23)**.

If the vote in favor of the issuance of the bonds is equal to at least sixty percent [60%] of the total vote cast for and against the proposition at the election, the board of directors shall issue the same and make provision for payment thereof **(296.6)**.

When a proposition to authorize an issuance of bonds by a school corporation is submitted to the electors, such proposition shall not be deemed carried or adopted, anything in the statutes to the contrary notwithstanding, unless the vote in favor is such authorization is equal to at least sixty percent [60%] of the total vote cast for and against the proposition at the election. All ballots cast and not counted as a vote for or against the proposition shall not be used in computing the total vote cast for or against said proposition. When a proposition to authorize an issuance of bonds has been submitted to the electors under section 75.1 and the proposal fails to gain approval by the required percentage of votes, such proposal, or any proposal which incorporates any portion of the defeated proposal, shall not be submitted to the electors for a period of six [6] months from the date of the regular or special election and may only be submitted on a date specified in section 39.2(4) paragraph “a”, “b”, or “c”, as applicable **(75.1)**.

Variance between the petition for and notice of election for the stated purpose of constructing a new schoolhouse and the school bond election ballot submitted the question of construction of a new senior high school building was one of substance fatal to the election and accordingly no school bonds could be lawfully issued **(Honohan v. United Community School District of Boone and Story Counties, 1965, 258 Iowa 57, 137 N.W. 2d 601)**.

A school board has discretion to determine how soon an election on a bond petition must be held. Petitions should be acted upon in the order they are filed and elections should be scheduled within ten days of receipt. There is some discretion on the part of the board to refuse petitions or to condition an election if the board determines that an election on the petition to be "contrary to the needs of the school district." Once a petition has been approved at an election, the board is obligated to comply with the proposal's directive, and does not have discretion to delay action pending an election on a conflicting proposal. Where the ultimate objective of two proposals are the same, so that approval of one would defeat the objective of another, the subsequent proposal "incorporates a portion" of the first, and is subject to a six-month delay after the election of the first proposal (**OAG #89-6-4(L)**).

It is within the discretion of the local school board of education to have two separate referendum questions submitted on a single ballot, or the board may present one bond issue prior to the other and if the first fails they must timely submit the second legally sufficient bond issue or face a potential mandamus action for arbitrary and capricious action. A petition for election may only be eliminated for legally sufficient reasons (**OAG #81-5-3(L)**).

Failure to give notice of election on the question of issuing bonds by a school district in the form prescribed by statute injuriously affected legality of the bonds when issued (**1898 Op. Att'y Gen. 112 (#96-6-19)**).

A new petition for a school bond issue can be accepted prior to the lapse of six months after the last issue failed (**OAG #64-8-12**).

If electors voted for two grade schools, or an elementary school and a high school, one of these could not be started and the other delayed unless such action was on the proposition and voted by the electors (**1940 Op. Att'y Gen. 388 (#39-9-21)**).

Bonded indebtedness upon approval of the voters, for the cost of building a bus garage is permitted. The general fund may not be expended for this purpose (**OAG #64-5-5(L), 296.1**).

Bonds or taxes voted for buildings and equipment for buildings cannot be used for purchase of sites (**1930 Op. Att'y Gen. 44**).

Site selection is for the determination of the board and it can change its mind after bonds are voted unless the site was specified in the proposition (**1912 Op. Att'y Gen. 604 (#12-3-8)**).

The state treasurer shall notify each political subdivision, instrumentality, and agency of the state to report to the treasurer the amount of bonds outstanding and each new bond issue. The treasurer shall adopt rules and establish forms for carrying out this provision. Each political subdivision, instrumentality, and agency of the state shall provide all the information required by the treasurer under this provision (**12.1**).

A school district may contract indebtedness and issue general obligation bonds or enter into insurance agreements obligating the school district to make payments beyond its current budget year for one or more of the following mechanisms to protect the school district or corporation from tort liability, loss of property, environmental hazards, or any other risk associated with the operation of the school district or corporation:

- a. To procure or provide for a policy of insurance.
- b. To provide a self-insurance program.
- c. To establish and maintain a local government risk pool.

However, this subsection does not apply to an insurance program for employee benefit plans (**296.7**).

### **Sale of Bonds**

When public bonds are offered for sale, the official in charge of the bond issue shall, by advertisement published at least once, the last one of which shall be not less than four [4] nor more than twenty [20] days before the sale in a newspaper located in the county or a county contiguous to the place of sale of the bonds, give notice of the time and place of sale of the bonds, the amount to be offered for sale, and any further information which the official deems pertinent (**75.2**).

Sealed bids may be received at any time prior to the calling for open bids, if open bids are provided for in the notice of sale. After the sealed bids are all filed, the official or officials shall call for open bids, if open bids are provided for in the notice of sale. After all of the open bids have been received the substance of the best open bid shall be noted in the minutes. If open bids are not permitted in the notice of sale, sealed bids may be received until it is announced that all sealed bids shall be opened. The official or officials shall then open any sealed bids that have been filed and they shall note in the minutes the substance of the best sealed bid (**75.3**).

Any or all bids may be rejected, and the sale may be advertised anew, in the same manner, or the bonds or any portion thereof may thereafter be sold at private sale to any one or more of such bidders, or other persons, by popular subscription or otherwise. In case of private sales, the bonds shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale **(75.4)**.

A public body authorized to issue bonds, notes, or other obligations may elect to receive bids to purchase such bonds, notes, or other obligations by means of electronic, internet or wireless communication; a proprietary bidding procedure or system; or by facsimile transmission to a location deemed appropriate by the governing body, in each instance as may be approved by the governing body and provided for in the notice of sale. An electronic bid shall be submitted in substantial conformity with the requirements of chapter 554D and any rules adopted pursuant to that chapter with respect to the acceptance of electronic records by a governmental agency. Additionally, before approving the use of an electronic bidding procedure, the public body shall find and determine that the specific procedure to be used will provide reasonable security and maintain the integrity of the competitive bidding process, and facilitate the delivery of bids by interested parties under the circumstances of the particular sale **(75.14)**.

Any other provisions of chapter 75 or any other law to the contrary notwithstanding, if the principal amount of an issue of public revenue bonds is fifteen million dollars [\$15,000,000] or greater, the official or governing body in charge of the bond sale may, if the official or governing body deems it advisable and in the best interests of the public, sell the bonds at private sale without the necessity of public advertisement or the taking of competitive bids and at a price above, at, or below par, plus accrued interest, as the official or governing body deems advisable and in the best interests of the public **(75.13)**. A school district could issue revenue bonds related to SAVE in chapter 423E and 423F.

All public bonds issued under chapter 75 may be sold at the price not less than ninety-eight percent [98%] of par, plus accrued interest from the date of the bonds to the date of delivery of the bonds **(75.5)**.

Hereafter issues of bonds of every kind and character shall be consecutively numbered. The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty [20] years from date of issues. Each issue of bonds shall be scheduled to mature serially in the same order as numbered **(76.1)**.

A public body authorized to issue bonds may elect to issue bonds bearing a variable or fluctuating rate of interest which is determined on one or more intervals by reference to an index or standard, or as fixed by an interest rate indexing or remarketing agent retained by the issuer of the bonds. A public issuer of public bonds may provide for additional security or liquidity, enter into agreements for, and expend funds for policies of insurance, letters of credit, lines of credit, or other forms of security issued by the financial institutions for the payment of principal, premium, if any, and interest on the bonds. A public issue of public bonds may also enter into contracts and pay for the services of underwriters, interest rate indexing agents, remarketing agents, trustees, financial consultants, depositories, and other services as determined by the governing body. In the case of general obligation bonds, fees for the services and costs of additional security and liquidity shall be considered incurred in lieu of interest and may be levied through the fund for payment of debt service on the bonds. Bonds issued under this section may be sold at public or private sale as determined by the governing body **(76.17(1))**. This section provides alternative and additional power for the issuance of bonds and is not an amendment to any other statute or a limitation upon powers under any other law **(76.17(2))**.

A public issuer of public bonds may provide for the purchase of bonds before their maturity and the remarketing of purchased bonds without causing the redemption of the purchased bonds **(76.17(3))**.

An underwriter employed to assist in the issuance of obligations by a political subdivision shall meet the requirements for doing business in Iowa sufficient to be subject to tax under rules of the department of revenue **(76.15)**.

No commission shall be paid, directly or indirectly, in connection with the sale of a public bond. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such bonds for sale **(75.6)**. A company has no right to charge a fee for the examination of a bond **(OAG #30-7-8(L))**. A school board has no authority to pay a service fee for the collection of interest on bonds **(OAG #35-12-21(L))**.

Any public officer who fails to perform any duty required by chapter 75 or who does any act prohibited by chapter 75, where no other penalty is provided, shall be guilty of a simple misdemeanor **(75.7)**.

Notwithstanding any contrary provision in the Code, public bonds may be in one or more denominations as provided by the proceedings of the governing body authorizing their issuance **(75.10)**.

Chapter 75 does not prevent the exchange of bonds for legal indebtedness evidenced by bonds, warrants, judgments, or otherwise as provided by law. Bonds shall not be exchanged for notes issued pursuant to section 76.13 in anticipation of the issuance of bonds **(75.9)**.

There is no statutory time limit within which bonds must be issued after approval of the voters **(OAG #52-8-9(L))**. Changing conditions may justify the delay in issuance of bonds, but justifiable delay is a fact rather than a law **(OAG #52-8-19(L))**.

The treasurer of a school corporation shall invest the proceeds of notes, bonds, refunding bonds, and other evidence of indebtedness, and funds being accumulated for the payment of principal and interest or reserves in investments set out in Code, an investment contract, or tax-exempt bonds **(12C.9(1))**. Earnings and interest from investments shall be used to pay the principal or interest as the principal or interest comes due on the indebtedness or to fund the construction of the project for which the indebtedness was issued, or shall be credited to the capital project fund for which the indebtedness was issued **(12C.9(2))**.

### **Bond Registration**

All of said bonds shall be substantially in the form provided for county bonds, but subject to changes that will conform them to the action of the board providing therefor; shall run not more than twenty [20] years, and may be sooner paid if so nominated in the bond; bear a rate of interest not exceeding that permitted by chapter 74A, payable semiannually; be signed by the president and countersigned by the secretary of the board of directors; and shall not be disposed of for less than par value, nor issued for other purposes than chapter 298 provides. All of said bonds, when issued, shall be delivered to the secretary of the board of directors, who shall register them in a book to be kept for that purpose, and shall deliver them when they have been properly countersigned. The expenses of engraving and printing of bonds may be paid out of the general fund **(298.22)**.

As used in chapter 76, unless the context otherwise requires, “public bond or obligation” means any obligation issued by or on behalf of the political subdivision of the state [school district] **(76.14)**.

Notwithstanding any other provision in the Code:

1. All public bonds or obligations issued before or after July 1, 1983 may be in registered form. An issuer of public bonds or obligations may designate for a term, as agreed upon, one or more persons, corporations, partnerships or other associations located within or without the state to serve as trustee, transfer agent, registrar, depository, or paying or other agent in connection with the public bonds or obligations and to carry out services and functions which are customary in such capacities or convenient or necessary to comply with the intent and provisions of chapter 76.
2. An issuer of public bonds or obligations may provide for the immobilization of the bonds through the designation of a bond depository or through a book-entry system of registration.
3. Any designated trustee, transfer agent, registrar, depository or paying or other agent may serve in multiple capacities with respect to an issue of public bonds or obligations.
4. Public bonds or obligations or certificates of ownership of the public bonds or obligations may be issued in any form or pursuant to any system necessary to be in compliance with standards issued from time to time by the municipal securities rulemaking board of the United States, the American national standards institute, any other securities industry standard, or the requirements of section 103 of the Internal Revenue Code [IRC].
5. Registration or immobilization of a public bond or obligation does not disqualify it as a lawful investment for depository institutions, trustees, public bodies, or other investors regulated by law.
6. An issuer of public bonds or obligations may provide for the payment of the costs of registration of its public bonds or obligations by the levy of additional taxes for the payment from the fund for the payment of the principal and interest of general obligations bonds or from any revenue source from which the principal and interest of the public bonds or obligations are payable.
7.
  - a. Records and documents pertaining to cancellation, transfer, redemption, or replacement of public bonds or obligations shall be preserved by the issuer or its agent for a period of not less than eleven [11] years. Thereafter, the records and documents may be destroyed by the issuer or its agent, preserving confidentiality as necessary.
  - b. An action with respect to the cancellation, transfer, redemption, or replacement of public bonds or obligations shall not be brought against an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent unless it is commenced within eleven [11] years of the cancellation, transfer, redemption, or replacement of the bonds or obligation **(76.10)**.

Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the bonds are confidential records entitled to protection under subsection 22.7(17). However, the issuer of the bonds or a state or federal agency may obtain information as necessary **(76.11)**.

A provision requiring that public bonds or obligations or certificates of ownership of public bonds or obligations issued by a public entity be executed or signed by particular public officers permits the signatures to be affixed by printing or other mechanical means. However, each instrument shall bear at least one original and manual signature, which may be the signature of any officer designated by law to execute the instrument or the signature of a registrar or trustee authenticating the instrument **(76.12(1))**.

Public bonds and obligations are valid and binding if they bear the signature of the officials in office on the date of execution of the bonds, notwithstanding that any or all of the persons whose signatures appear on the public bonds or obligations have ceased to hold the office before the delivery of the public bonds or obligations. Reprinted or reissued bonds are valid and binding if they bear facsimiles of the signatures of either the public officials who executed the original issue of the bonds or the officials in office at the time of execution of the reprinted or reissued bonds **(76.12(2))**.

A public issuer of bonds or other debt obligations may covenant that the issuer will comply with requirements or limitations imposed by the Internal Revenue Code to preserve the tax exemption of interest payable on the bonds or obligations and may carry out and perform other covenants, including but not limited to, the payment of any amounts required to be paid by the issuer to the United States government **(76.18)**.

### **Interim Financing**

A public body authorized to issue bonds may issue project notes in anticipation of the receipt of any of the following:

- a. Proceeds from the issuance of public bonds or obligations previously authorized.
- b. Proceeds to be received pursuant to law or agreement from any state or federal agency.
- c. Income or revenue from sources to be received and expended for the project during the project construction or acquisition period.
- d. Any combination of paragraphs "a" through "c" **(76.13(1))**.

Notes shall be issued in the form and manner provided in a resolution of the governing body of the issuer. The resolution may set forth and appropriate the moneys anticipated by the notes **(76.13(2))**.

The resolution may provide that to the extent issued in anticipation of public bonds or obligations, notes shall be paid from the proceeds of the issuance of public bonds or obligations. To the extent issued in anticipation of bonds, note proceeds shall be expended only for the purposes for which the bonds proceeds may be expended **(76.13(3))**.

Notes shall not be issued in anticipation of public bonds or obligations in an amount greater than the authorized amount of the public bonds or obligations and moneys appropriated for the same purposes **(76.13(4))**.

Notes may be sold at public or private sale and bear interest at rates set by the governing body of the issuer at the time of their issuance notwithstanding chapter 74A. The authority of the public body to issue project notes under this section is in addition to any other authority of the public body to issue other obligations as otherwise provided by law **(76.13(5))**.

### **Debt Service**

Bonds are indebtedness repaid from the debt service fund. Taxes to retire bonds must be levied in that fund. Principal and interest on bonds cannot be paid from the general fund **(OAG #28-7-12(L))**.

The board of each school corporation shall, when estimating and certifying the amount of money required for general purposes, estimate and certify to the board of supervisors of the proper county for the debt service fund the amount required to pay interest due or that may become due for the fiscal year beginning July 1, thereafter, upon lawful bonded indebtedness, and in addition thereto such amount as the board may deem necessary to apply on the principal **(298.18(1)"a")**.

The amount estimated and certified to apply on principal and interest for any one year shall not exceed two dollars and seventy cents [\$2.70] per thousand dollars of the assessed valuation of the taxable property of the school corporation except as otherwise provided in this section **(298.18(1)"b")**.

For the sole purpose of computing the amount of bonds which may be issued as a result of the application of any limitation referred to in this section, all interest on the bonds in excess of that accruing in the first twelve [12] months may be excluded from the first annual levy of taxes, so that the need for including more than one year's interest in the first annual levy of taxes to pay the bonds and interest shall not operate to further restrict the amount of bonds which may be issued, and in certifying the annual levies to the county auditor or auditors such first annual levy of taxes shall be sufficient to pay all principal of and interest on said bonds becoming due prior to the next succeeding annual levy and the full amount of such first annual levy shall be entered for collection by said auditor or auditors, as provided in chapter 76 **(298.18(1)"c")**.

The amount estimated and certified to apply on principal and interest for any one year may exceed two dollars and seventy cents [\$2.70] per thousand dollars of assessed value by the amount approved by the voters of school corporation, but not exceeding four dollars and five cents [\$4.05] per thousand of the assessed value of the taxable property within any school corporation, provided that the registered voters of such school corporation have first approved such increased amount at an election held on a date specified in section 39.2(4)"c" **(298.18(1)"d")**. The proposition submitted to the voters at such election shall be in substantially the following form:

*"Shall the board of directors of the \_\_\_\_\_, in the County of \_\_\_\_\_, State of Iowa, be authorized to levy annually a tax exceeding two dollars and seventy cents per thousand dollars, but not exceeding \_\_\_\_\_ dollars and \_\_\_\_\_ cents per thousand dollars of the assessed value of the taxable property within said school corporation to pay the principal of and interest on bonded indebtedness of said school corporation, it being understood that the approval of this proposition shall not limit the source of payment of the bonds and interest but shall only operate to restrict the amount of bonds which may be issued?" **(298.18(2))**.*

Notice of the election shall be given by the county commissioner of elections according to section 49.53. The county commissioner of elections shall conduct the election pursuant to the provisions of chapters 39 to 53 and certify the results to the board of directors. The proposition shall not be deemed carried or adopted unless the vote in favor of such proposition is equal to at least sixty percent [60%] of the total vote cast for and against the proposition at the election. Whenever such a proposition has been approved by the voters of a school corporation as hereinbefore provided, no further approval of the voters of such school corporation shall be required as a result of any subsequent change in the boundaries of such school corporation **(298.18(3))**.

The voted tax levy referred to in this section shall not limit the source of payment of bonds and interest but shall only restrict the amount of bonds which may be issued **(298.18(4))**.

The ability of a school corporation to exceed two dollars and seventy cents [\$2.70] per thousand dollars assessed value to service principal and interest payments on bonded indebtedness is limited and conferred only to those school corporations engaged in the administration of elementary and secondary education **(298.18(5)"a")**.

If a school corporation leases a building or property, which has been used as a junior college by such corporation, to a community college, the annual amounts certified as herein provided by such leasing school corporation for payment of interest and principal due to lawful bonded indebtedness incurred by such leasing school corporation for purchasing, building, furnishing, reconstructing, repairing, improving or remodeling the building leased or acquiring or adding to the site of such property leased, to the extent of the respective annual rent the school corporation will receive under such lease, shall not be considered as a part of the total amount estimated and certified for the purposes of determining if such amount exceeds any limitation contained in this section **(298.18(5)"b")**.

The board of supervisors of the county to which the certificate is addressed within the contemplation of section 298.18 shall levy the necessary tax to raise the amount estimated, or so much thereof as may be lawful and within the limitation of said section which levy shall be made as other taxes for school purposes **(298.19)**.

The governing authority of these political subdivisions before issuing bonds shall, by resolution, provide for the assessment of an annual levy upon all the taxable property in the political subdivision sufficient to pay the interest and principal of the bonds within a period named not exceeding the time applicable period of time specified in section 76.1 [20 years]. A certified copy of this resolution shall be filed with the county auditor or the auditors of the counties in which the political subdivision is located; and the filing shall make it a duty of the auditors to enter annually this levy for collection from the taxable property within the boundaries of the political subdivision until funds are realized to pay the bonds in full. The levy shall continue to be made against property that is severed from the political subdivision after the filing of the resolution until funds are realized to pay the bonds in full **(76.2(1)"a")**.

The annual levy shall be sufficient to pay the interest and approximately such portion of the principal of the bonds as will retire them in a period not exceeding twenty [20] years from date of issue **(76.1(2)"a")**.

If the resolution is filed prior to May 1 the annual levy shall begin with the tax levy for collection commencing July 1 of that year. If the resolution is filed after May 1, the annual levy shall begin with the tax levy for collection in the next succeeding fiscal year. However, the governing authority of the political subdivision may adjust a levy of taxes made under this section for the purpose of adjusting the annual levies and collections for property severed from the political subdivision, subject to the approval of the director of the Department of Management **(76.2(1)"b")**.

If funds, including reserves and amounts available for temporary transfer, are found to be insufficient to pay in full any installment of principal or interest, a public issuer of bonds may anticipate the next levy of taxes pursuant to this section in the manner provide in chapter 74, whether the taxes so anticipated are to be collected in the same or a future fiscal year **(76.2(2))**.

### **Refunding Bonds**

For the purpose of providing for payment of any indebtedness of any school corporation represented by judgments or bonds, the board of directors of such school corporation, at any time or times, may provide by resolution for the issuance of bonds of such school corporation, to be known as funding or refunding bonds. The proceeds derived from the public or private sale of such funding or refunding bonds shall be applied in payment of such indebtedness; or the funding bonds or refunding bonds may be issued in exchange for the evidences of such indebtedness, par for par **(298.20)**.

School corporations may at any time or times extend or renew any legal indebtedness or any part thereof they may have represented by bonds or certificates where such indebtedness is payable from a limited annual tax or from a voted annual tax, and may by resolution fund or refund the same and issue bonds therefore running not more than twenty [20] years to be known as funding or refunding bonds, and make provision for the payment of the principal and interest thereof from the proceeds of an annual tax for the period covered by such bonds similar to the tax authorized by law or by the electors for the payment of the indebtedness so extended or renewed **(76.7)**.

Proceeds of refunding bonds cannot be used for a different purpose than for which issued **(1934 Op. Att'y Gen. 90 (#33-2-8))**.

Under the decision in Banta vs Clarke County, 219 Iowa 1195, a school district may issue refunding bonds notwithstanding that indebtedness at the time of refund exceeds the legal limit **(1936 Op. Att'y Gen. 121 (#35-4-11))**.

### **Bond Redemption**

Whenever the governing authority of such political subdivision shall have on hand funds derived from any source other than taxation which may be appropriated to the payment either of interest or principal, or both principal and interest of such bonds, such funds may be so appropriated and used and the levy for the payment of the bonds correspondingly reduced. This section shall not restrict the authority of a political subdivision to apply sales and services tax receipts collected pursuant to chapter 423B for such purpose. Notwithstanding section 423F.3, a school district may apply tax receipts collected pursuant to chapter 423F for the purposes of this section **(76.4)**.

Whenever the amount in the hands of the treasurer, belonging to the funds set aside to pay bonds, is sufficient to redeem one or more of the bonds which by their terms are subject to redemption, the treasurer shall give the owner of said bonds thirty [30] days' written notice of the readiness of the district to pay and the amount it desires to pay. If not presented for payment or redemption within thirty [30] days after the date of such notice, the interest on such bonds shall cease and the amount due thereon shall be set aside for its payment whenever it is presented **(298.23)**.

Hereafter issues of bonds of every kind and character by school corporations shall be consecutively numbered. Each issue of bonds shall be scheduled to mature in the same order as numbered **(76.1)**.

All redemptions shall be made in the order of their numbers. The treasurer shall keep a record of the parties to whom the bonds are sold, together with their post office addresses, and notice mailed to the address as shown by such record shall be sufficient **(298.24)**.

Bonds are not callable prior to maturity in the absence of a provision therefor in the bonds **(1938 Op. Att'y Gen. 187 (#37-4-23))**.

School bonds may be redeemed before the redemption date if provision therefor is made in the bonds, but where the bonds contain no provision for redemption prior to maturity, the board would have no authority to pay a premium in order to effect redemption prior to maturity **(1938 Op. Att'y Gen. 200 (#37-4-30))**.

Bonds called for payment but remaining unpaid ten years after maturity are barred by the statute of limitations (**OAG #47-10-21(L)**).

The balance in the schoolhouse fund may be used for the addition of two classrooms to a school building if such additions were contemplated in the building program voted on which authorized the bond sale from which these funds were obtained (**OAG #78-2-21**).

When a building costs less than the proceeds of the bond issue voted to construct that building, the excess may be used to construct and equip an athletic field on adjacent property owned by the school district without another vote of the electorate (**OAG #79-11-20**).

SAVE revenue may be used for payment or retirement of outstanding bonds previously issued for school infrastructure purposes (**423F.3(6)"b"**). Previously as used in chapter 423F means general obligation bonds issued prior to the passage of the local options sales and services tax (**AG Informal advice, November, 2000**). Notwithstanding section 423F.3, a school district may apply SAVE receipts collected pursuant to chapter 423F for the purposes of paying principal and interest on bonded indebtedness (**76.4**).

### **Secure an Advanced Vision for Education (SAVE)**

The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school [revenue] bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes and the supplemental school infrastructure amount distributed, and revenues received pursuant to section 423F.2, for principal and interest repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs as school infrastructure is defined in subsection 423E.1(3), Code 2007). Bonds may be issued to refund outstanding and previously issued bonds under this section. The bonds are a contractual obligation of the school district, and the resolution issuing the bonds and pledging SAVE revenues or its share of the revenues distributed pursuant to section 423F.2 to the payment of principal and interest on the bonds is a part of the contract. Bonds issued pursuant to this section shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to any other law relating to the authorization, issuance or sale of bonds (**423E.5(1)**).

After July 1, 2008, all local sales and services taxes for school infrastructure purposes imposed under chapter 423E are repealed. The increase in the state sales, services, and use taxes under chapter 423, subchapters II and III, from 5 percent to 6 percent shall replace the repeal of the county's local sales and services tax for school infrastructure purposes. To the extent that any school district has issued bonds anticipating the proceeds of a local sales and services tax for school infrastructure purposes prior to July 1, 2008, the pledge of such tax receipts for the payment of principal and interest on such bonds shall be replaced by a pledge of its share of the revenues the school district receives under this section (**423F.1**).

A school district may anticipate its share of the revenues under section 423F.2 by issuing bonds in the manner provided in section 423E.5. However, to the extent any school district has issued bonds anticipating the proceeds of an extended local sales and services tax for school infrastructure purposes imposed by a county pursuant to former chapter 423E, Code and Code Supplement 2007, prior to July 1, 2008, the pledge of such revenues for the payment of principal and interest on such bonds shall be replaced by a pledge of its share of the revenues under section 423F.2 (**423F.4**).

### **Leases**

The Code does not give authority to school districts to lease equipment or to enter into a lease-purchase agreement for equipment] (**OAG #62-3-7**). [Note: After this opinion was written, the Code changed to allow leases and lease-purchase agreements for equipment from PPEL fund, but did not grant similar authority to any other fund or funds.]

PPEL fund may be expended for the rental of facilities under chapter 28E (**298.3(1)"h"**).

PPEL fund may be expended for the purchase, lease, or lease-purchase of equipment or technology exceeding \$500 in value per purchase, lease, or lease-purchase transaction. Each transaction may include multiple equipment or technology units (**298.3(1)"c"**).

The board of directors of a local school district for which a voter-approved PPEL levy has been voted pursuant to section 298.2, may enter into a rental or lease arrangement, consistent with the purposes for which the voter-approved PPEL levy has been voted, for a period not exceeding ten [10] years and not exceeding the period for which the voter-approved PPEL has been authorized by the voters (**279.26**). However, if the board intends to enter into a rental or lease

arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes **(298.2(4))**.

The local school board shall have the power to purchase or lease buses and other transportation facilities, and maintain same, and to enter into contracts for transportation subject to any provisions of law affecting same **(285.10(3))**.

The board may, with approval of sixty percent [60%] of the voters voting in an election in the school district, make extended time contracts not to exceed twenty [20] years in duration for rental of buildings to supplement existing schoolhouse facilities; and where it is deemed advisable for buildings to be constructed or placed on real estate owned by the school district, these contracts may include lease-purchase option agreements, the amounts to be paid out of the PPEL fund. Before entering into a rental or lease-purchase option contract, authorized by the electors, the board shall first adopt plans and specifications for a building or buildings which it considers suitable for the intended use and also adopt a form of rental or lease-purchase option contract. The board shall then invite bids thereon, by advertisement published once each week for two consecutive weeks, in a newspaper published in the county in which the building or buildings are to be located, and the rental or lease-purchase option contract shall be awarded to the lowest responsible bidder, but the board may reject any and all bids and advertise for new bids **(278.1(2))**.

The board may, when necessary, rent a room and employ a teacher, where there are ten [10] children for whose accommodation there is no schoolhouse **(297.12)**. This is the only rental expenditure authority in Code related to the general fund, and the term "lease" is not used in Code with general fund other than revenues.

Proceeds from the lease of real or other property [belonging to the school corporation] shall be placed in the general fund **(297.22(1)"b")**.

The AEA board is authorized to lease, purchase, or lease-purchase, subject to the approval of the state board of education or its designee and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than ten [10] years and with an annual cost of less than twenty-five thousand dollars [\$25,000] does not require the approval of the state board. The state board shall not approve a lease, purchase, or lease-purchase until the state board is satisfied by investigation that public school corporations within the area do not have suitable facilities available. A purchase of property that is not a lease-purchase may be made only within two [2] years of a disaster as defined in section 29C.2, subsection 1, and subject to the requirements of this subsection **(273.3(7))**.

### **Lease-Purchase**

The Code does not give authority to school districts to lease equipment or to enter into a lease-purchase agreement for equipment] **(OAG #62-3-7)**. [Note: After this opinion was written, the Code changed to allow leases and lease-purchase agreements for equipment from PPEL fund, but did not grant similar authority to any other fund or funds.]

Lease-purchase arrangement includes, but is not limited to, an arrangement in which title of ownership passes when the final installment payment is made **(8.46(1)"b")**.

PPEL fund may be expended for the purchase, lease, or lease-purchase of equipment or technology exceeding \$500 in value per purchase, lease, or lease-purchase transaction. Each transaction may include multiple equipment or technology unit **(298.3(1)"c")**.

PPEL fund may be expended for the purchase or lease-purchase option agreements for school buildings **(298.3(1)"j")**.

The board of directors of a local school district for which a voter-approved PPEL levy has been voted pursuant to section 298.2, may enter into a rental or lease arrangement, consistent with the purposes for which the voter-approved PPEL levy has been voted, for a period not exceeding ten [10] years and not exceeding the period for which the voter-approved PPEL has been authorized by the voters **(279.26)**. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes **(298.2(4)"a")**.

The board may, with approval of sixty percent [60%] of the voters voting in an election in the school district, make extended time contracts not to exceed twenty [20] years in duration for rental of buildings to supplement existing schoolhouse facilities; and where it is deemed advisable for buildings to be constructed or placed on real estate owned by the school district, these contracts may include lease-purchase option agreements, the amounts to be paid out of the PPEL fund. Before entering into a rental or lease-purchase option contract, authorized by the electors, the board shall first adopt plans and specifications for a building or buildings which it considers suitable for the intended use and also adopt a form of rental or lease-purchase option contract. The board shall then invite bids thereon, by advertisement

published once each week for two consecutive weeks, in a newspaper published in the county in which the building or buildings are to be located, and the rental or lease-purchase option contract shall be awarded to the lowest responsible bidder, but the board may reject any and all bids and advertise for new bids **(278.1(2))**.

The debt service fund shall be used to pay interest as it becomes due and the amount necessary to pay the principal when due on bonds or other authorized indebtedness issued by the district, and to make payments required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by this Code. Moneys available to service this debt and received from other sources shall be transferred to the debt service fund and the payment of the debt shall be made from this fund **(298A.10)**.

An AEA may hold property and execute purchase agreements within two [2] years of a disaster as defined in section 29C.2, subsection 1, and lease-purchase agreements pursuant to section 273.3, subsection 7, and if the lease-purchase agreement exceeds ten [10] years or the purchase price of the property to be acquired pursuant to a purchase or lease-purchase agreement [equals or ] exceeds twenty-five thousand dollars [\$25,000], the AEA shall conduct a public hearing on the proposed purchase or lease-purchase agreement and receive approval from the AEA board of directors and the state board of education or its designee before entering into the agreement **(273.2(2))**.

The AEA board is authorized to lease, purchase, or lease-purchase, subject to the approval of the state board of education or its designee and to receive by gift and operate and maintain facilities and buildings necessary to provide authorized programs and services. However, a lease for less than ten [10] years and with an annual cost of less than twenty-five thousand dollars [\$25,000] does not require the approval of the state board. The state board shall not approve a lease, purchase, or lease-purchase until the state board is satisfied by investigation that public school corporations within the area do not have suitable facilities available. A purchase of property that is not a lease-purchase may be made only within two [2] years of a disaster as defined in section 29C.2, subsection 1, and subject to the requirements of this subsection **(273.3(7))**.

### **Installment Acquisitions**

Installment acquisition includes, but is not limited to, an arrangement in which title of ownership passes when the first installment payment is made **(8.46(1)"a")**.

The local school board has power to purchase buses and enter into contracts to pay for such buses over a five-year period as follows: one-fourth of the cost when the bus is delivered and the balance in equal annual installments, plus simple interest due. The bus shall serve as security for balance due **(285.10(7)"b")**.

### **Loans**

The board of directors of a school corporation may purchase equipment, and may negotiate and enter into a loan agreement and issue a note to pay for the equipment [from the general fund]. The note must mature within five [5] years, or the useful life of the equipment, whichever is less. Before entering into a loan agreement for an equipment purchase, the school corporation must publish a notice, including a statement of the amount and purpose of the agreement, at least once in a newspaper of general circulation within the school corporation at least ten [10] days before the meeting at which the loan agreement is to be approved **(279.48)**. This Code section is the only authority granted for long-term loans in the general fund. The authority for long-term loans in PPEL is authorized in section 298.2. Other tax funds do not have authority for long-term loans.

The AEA board is authorized to purchase equipment as provided in section 279.48 **(273.3(20))**.

The board of directors may pay the actual cost of an asbestos project from any funds in the general fund of the district, funds received from the PPEL levy, or moneys obtained through a federal asbestos loan program, to be repaid from any of the funds specified in this section over a three-year period **(279.52)**.

The department of natural resources may facilitate the loan process for school districts and AEAs. Loans shall be facilitated for all cost-effective energy management improvements. For school districts and AEA to receive loan assistance under the program, the department of natural resources shall require completion of an energy management plan including an energy analysis **(473.20(2))**.

School districts may enter into financing arrangements with the authority or its duly authorized agents or representative obligating the school district to make payments on the loans beyond the current budget year of the school district. Chapter 75 shall not be applicable. School districts shall repay the loans from moneys in either their general fund or debt service fund **(473.20)**. [Note that there is an error in this Code section. It should say "general fund or PPEL fund," which is the language in section 279.53 below; debt service fund is prohibited from using its tax receipts for any

purpose other than retirement of bonded indebtedness, and both general fund and PPEL fund transfer money to the debt service fund when principal and interest is due on lawful debt pursuant to section 298A.10.]

AEAs shall repay the loans from any moneys available to them [which would be general fund] **(473.20(3)"a")**.

The proceeds of loans issued to school districts pursuant to section 279.48, 279.52, or 473.20 shall be deposited into either the general fund of a school district or the physical plant and equipment levy fund [as appropriate]. The board of directors shall expend the amount of the principal and interest due each year to maturity from the same fund into which the loan proceeds were deposited **(279.53)**.

In order to make immediately available proceeds of the voter-approved physical plant and equipment levy which has been approved by the voters as provided in section 298.2, the board of directors may, with or without notice, borrow money and enter into loan agreements in anticipation of the collection of the tax with a bank, investment bankers, trust company, insurance company, or insurance group. The loan must mature within the period of time authorized by the voters and shall bear interest at a rate which does not exceed the limits under chapter 74A. A loan agreement entered into pursuant to this section shall be in a form as the board of directors shall by resolution provide and the loan shall be payable as to both principal and interest from the proceeds of the annual levy of the voter-approved physical plant and equipment levy, or so much thereof as will be sufficient to pay the loan and interest on the loan **(297.36)**. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes **(298.2(4)"a")**.

The proceeds of a loan must be deposited in the physical plant and equipment levy fund. Warrants paid from this fund must be for purposes authorized for the voter-approved physical plant and equipment levy. This section does not limit the authority of the board of directors to levy the full amount of the voter-approved physical plant and equipment levy, but if and to whatever extent the tax is levied in any year in excess of the amount of principal and interest falling due in that year under a loan agreement, the first available proceeds, to an amount sufficient to meet maturing installments of principal and interest under the loan agreement, shall be paid into the debt service fund for the loan before the taxes are otherwise made available to the school corporation for other school purposes, and the amount required to be annually set aside to pay principal of and interest on the money borrowed under the loan agreement constitutes a first charge upon the proceeds of the voter-approved physical plant and equipment levy, which tax shall be pledged to pay the loan and the interest on the loan. This section is supplemental and in addition to existing statutory authority to finance the purposes specified in section 298.2 for the physical plant and equipment levy, and for the borrowing of money and execution of loan agreements in connection with that section, and is not subject to any other law. The fact that a school corporation may have previously borrowed money and entered into loan agreements under authority of this section does not prevent the school corporation from borrowing additional money and entering into further loan agreements if the aggregate of the amount payable under all of the loan agreements does not exceed the proceeds of the voter-approved physical plant and equipment levy **(297.36)**.

The debt service fund shall be used to pay interest as it becomes due and the amount necessary to pay the principal when due on bonds or other authorized indebtedness issued by the district, and to make payments required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by this Code. Moneys available to service this debt and received from other sources shall be transferred to the debt service fund and the payment of the debt shall be made from this fund **(298A.10)**.