

# Funding capital improvements

In the course of providing services to residents, township boards are often faced with the challenge of funding capital improvements, which can vary widely from purchasing a new computer or fire truck, to building a new fire station, library or township hall, to participating in a road paving program or installing water and sewer lines.

As infrastructure ages, local officials must grapple with the issues of replacing capital assets, meeting new needs and deciding how to fund these projects—many of which require large amounts of money.

For the past few years, these planning decisions and challenges have been considered by townships against a backdrop marked by an economy in recession, depressed housing values, the appointment of emergency financial managers for financially troubled Michigan municipalities and school districts, and the recent bankruptcy filing by the City of Detroit. These events, and others, have led to greater scrutiny and regulation of the borrowing of money by local governments for capital improvements and other public purposes.

Fortunately, the great majority of Michigan townships are conservatively run and financially healthy, and, as a result, despite regional and national economic issues, are in a favorable position to proactively plan for the replacement of aging infrastructure and the acquisition of new capital improvements needed for the effective and continued provision of township services.

This article will help township officials meet funding challenges by examining the available options for townships to pay for capital improvements. The laws that authorize townships to borrow money and issue debt instruments are also highlighted.

## Capital improvement planning fosters efficient use of funds

Advance planning is the single best tool township officials can employ to develop an overall township strategy of when—and how—to acquire and fund capital improvements for which there is an identified local need.

The Michigan Planning Enabling Act, which became law in 2008, authorizes a township, in coordination with its planning commission, to develop and adopt a master plan. The master plan, in part, is required to address such present and future land use and infrastructure issues as public safety, transportation, sanitary sewer, public water, drainage, open space, public buildings and other public improvements. (MCLs 125.3807 and 125.3833) Every five years after adoption of a master plan, the township planning commission is required to review the master plan and determine whether it should be amended or replaced by a new master plan. (MCL 125.3845(2))

If a township with a master plan also owns or operates a water supply or sewage disposal system, the township is required to annually prepare a written capital improvement program (CIP) for public structures and improvements, in order of priority, that will be “needed or desirable and can be undertaken within the ensuing six-year period.” (MCL 125.3865) The planning commission annually prepares the CIP (unless exempted by the township board), and often is assisted in this task by township officials or consultants.



**Advance planning is the single best tool township officials can employ to develop an overall township strategy of when—and how—to acquire and fund capital improvements for which there is an identified local need.**

To be most effective, the CIP should discuss the sources and means of acquiring and financing the capital improvements identified in the CIP.

Even if a township does not own or operate a water supply or sewage disposal system, it is well advised to prepare an annual CIP.

To effectively enable a township to adequately anticipate and plan for necessary capital improvements, the preparation of the CIP should be coordinated with the township's annual budget process. A written financial plan and other CIP allows decision-makers to simultaneously scrutinize all alternatives and establish financial and other priorities based on a rational selection process. Consequently, a township board can effectively use scarce township dollars.

Long-term CIP planning is especially warranted for water and sewer utilities and projects that require cooperation with neighboring communities, such as joint fire departments, district libraries and similar long-term infrastructure needs identified in the township master plan.

The Michigan Planning Enabling Act prohibits a township with an approved master plan from constructing or authorizing for construction, in an area covered by the master plan, a street, square, park, playground, public way, ground or other open space, or a public building or other structure unless the township board first submits the proposed public improvement to the planning commission for approval of the "location, character and extent" of the proposed public improvement. (MCL 125.3861(1)) This often-overlooked requirement is intended to ensure that proposed public improvements conform to the master plan and that the planning commission is aware of the improvements before they are constructed. If the planning commission disapproves a

*Editor's note: In the past several years, there have been numerous changes in the legal and regulatory requirements for capital improvement planning and funding. This article is intended to update a series of articles originally published by this author in the September 1999 Michigan Township News and updated in the June 2005 Michigan Township News.*

*Visit MTA's Capital Improvement Planning Web page, on the members-only section of [www.michigantownships.org](http://www.michigantownships.org), for the 2005 article and additional resources.*

# cover story

township project, a vote of the township board is required to override that action. If the planning commission fails to act within 35 days after the submission of a proposed public improvement project by the township board, the project is considered to be approved by the planning commission.

## Options to fund capital improvements

There are a variety of sources available to townships to fund capital improvements. While legal, political and economic constraints determine the most appropriate financing method, careful planning may leverage existing township revenues to meet the needs of township residents. If borrowing is required, township officials should proceed cautiously to ensure that all applicable state and federal requirements are strictly met. The following are common approaches to funding capital outlays:

**Grants.** Among the best ways to fund a capital improvement is to use federal, state or private grant funds, if available. Capital improvement plans may help townships successfully apply for grants. Funding entities award most grants on a competitive basis, and applicants must often prove a greater need than that of other communities seeking the grant. Having a project identified in a CIP demonstrates that the township identified the project as a priority, and that township officials have a level of professional administration and governance to carry out a project.

The State of Michigan administers many grant programs for a variety of public improvements. These grant programs can be accessed via the state's website, [www.michigan.gov](http://www.michigan.gov). Federal grant programs typically utilized by townships include the U.S. Department of Agriculture Rural Development program for water and wastewater systems for rural communities with populations of 20,000 or less.

**Current township funds.** Typically, the next best source of capital improvement funding is to use current township surpluses or accumulated fund balances. It may be possible to fund small capital acquisitions entirely from the current budget. This pay-as-you-go method does not incur interest charges on borrowed funds or the legal and accounting costs associated with incurring debt. To fund larger capital improvements, townships can earmark surplus revenues by transferring money to a capital improvement fund or by adopting a resolution to restrict some of the general fund equity. For instance, some townships successfully pay cash for fire trucks by setting aside funds each year into a segregated fund.

**Extra-voted millages.** Some townships levy an extra-voted millage for specified types of capital improvement projects. This method is often used to fund township road paving projects or purchase fire apparatus. The money raised from a voted millage may be used to directly fund a

pay-as-you-go program—to pave one mile of road per year or to accumulate funds over several years to fund a cash purchase of fire turnout gear, for example. If the township cannot wait long enough to accumulate the funds necessary for a cash purchase, and if authorized by the terms of the ballot proposal, extra-voted millage can be used to pay principal and interest on a bond issue or an installment purchase agreement used to fund a current capital purchase.

**Special assessments.** Special assessments provide a useful method of raising money from properties that receive a special benefit from capital improvements. Townships can only levy special assessments for purposes specifically authorized by statute. For instance, the Township Public Improvement Act, Public Act 188 of 1954 (MCL 41.721, *et seq.*), authorizes special assessment districts for storm and sanitary sewers, water mains, public and private roads, lighting systems, sidewalks, aquatic weed control and other special improvements. PA 33 of 1951 (MCL 41.801, *et seq.*) authorizes townships to levy special assessments to purchase, house or operate police or fire equipment. Other statutes authorize special assessments for dust control, erosion control structures and public transportation, to name a few. Procedural requirements vary from statute to statute, and failure to follow them may make a special assessment voidable.

Once a special assessment is levied, if it is payable in a single installment by the benefited property owners, the proceeds may be used as cash to fund capital improvements on a pay-as-you-go basis as the costs are incurred. This approach is often used to provide street lighting. Alternatively, if the special assessments are payable in multiple annual installments, a township may borrow money, pledging the special assessments as collateral to repay the bonds. In this case, the proceeds of the bond issue are used to fund the project.



**Borrowing.** In general, if a township does not have grant funds or sufficient cash on hand to pay for capital improvements, or is unable to anticipate revenue sources to generate cash to fund a pay-as-you-go purchase, the township must consider borrowing money to fund its capital improvements.

The authority for townships to borrow money and incur debt must be provided by a specific law. According to the 1963 Michigan Constitution, Article 7, Section 17, “Each organized township shall be a body corporate with powers and immunities provided by law.”

MCL 41.3 states that general law township boards or a township officer “shall not create a debt or liability against the township ... unless the creation of the debt or liability or the payment of money has been authorized by vote of the registered electors of the township or by law.”

MCL 42.14a states that a charter township “(1) ... may borrow money and issue bonds on the credit of the township for the purpose of constructing or otherwise acquiring a public improvement ... (2) Bonds shall not be issued, except special assessment bonds, bonds for the township portion of local improvements, and bonds which the township board is authorized by a specific statute to issue without vote of the electors, unless approved by a majority of the electors voting at a general ... election.”

Charter townships are limited in the amount of net indebtedness incurred to 10 percent of the total township assessed valuation. (MCL 42.14a) Net indebtedness does not include several types of bonds, including special assessment and revenue bonds. General law townships are not statutorily constrained as to the overall amount of bonded indebtedness allowed. However, separate limitations are set for certain types of financing. For example, a maximum limit of 5 percent of assessed value applies to certain general obligation bonds.

In the context of funding capital improvements, authorization “by law” means an express statutory provision that authorizes a township to incur a debt by borrowing money and issuing bonds, notes or other types of debt such as an installment purchase agreement. As a general rule, a township may not borrow money or incur debt unless expressly authorized by a statute and a vote of the township board. In some circumstances, the borrowing of money or incurring of debt by a township may also be subject to a right of referendum or the approval of a ballot proposal by township voters.

### State government regulates borrowing

The Revised Municipal Finance Act (MCL 141.2101, *et seq.*) directs the Michigan Department of Treasury to regulate township and other municipal borrowing, with an overriding goal of protecting state taxpayers, and the credit of the state and local municipalities.

To engage in most types of borrowing, with installment purchase agreements being a notable exception, a township must, as a general rule, be pre-qualified on an annual basis to issue “municipal securities” (i.e. bonds, notes and other types of debt). Eligibility for “qualified status” is dependent upon compliance with statutory criteria indicative of a financially “healthy” township, including filing an annual audit, or biennial audit as applicable, within six months after close of the township’s fiscal year (or, if an extension to file the annual audit has been approved, within the extension period).



## Scheduling township elections for capital improvement projects

Certain types of township bond issues are either subject to right of referendum, which may lead to an election if sufficient petitions are signed by township voters, or must simply be approved by township voters before the bonds may be issued. A township that wishes, or is required, to submit a ballot proposal to its electors must do so at one of the four regular elections each year to be held in February, May, August and November.

In scheduling an election on one of the four election dates, a township should determine if it will be competing with ballot proposals submitted by overlapping units of government, such as school districts, for voter approval. This could lead to township voters picking and choosing whether to support a school bond proposal or a township bond proposal. Townships may wish to identify a regular election date when the township proposal may be the only item on the ballot.

To obtain qualified status, a township must file an annual qualifying statement within six months after the end of its fiscal year. If the qualifying statement is filed after this time, a \$100 late fee will be assessed. The qualifying statement must be filed electronically with the Michigan Department of Treasury in accordance with newly updated procedures established by Treasury Bulletin No. 6 effective May 1, 2013. While not required, townships are strongly encouraged to request their auditors to coordinate the filing of a qualifying statement each year at the time the township audit is filed.

Reasons why a township may be denied “qualified status” include failure to file its audit within six months after the end of the township’s fiscal year, ending the fiscal year with a deficit in any fund, borrowing money in violation of state law (such as obtaining a commercial loan from a bank to finance a purchase or project, which is not permitted under state law), having total delinquent taxes greater than 18 percent of the total taxes levied by the township, and defaulting on the payment of any debt.

Municipalities that are denied qualified status are subject to a longer, more extensive case-by-case prior application review by the Department of Treasury before being approved to borrow money. This lengthier process can typically add several weeks or more to the process of issuing bonds.

Moreover, the statutory fee structure imposed by the Revised Municipal Finance Act imposes a higher fee—a

# cover story

minimum of \$800 and maximum of \$2,000—per bond issue for a municipality subject to the prior approval process. In contrast, a township with qualified status is subject to a minimum fee of \$100 for a bond issue of up to \$500,000, and a maximum fee of \$1,000 for bond issues of \$5 million or more.

The Revised Municipal Finance Act authorizes several types of municipal borrowing pertinent to the funding of capital improvements, including capital improvement bonds, bonds to fund county drain assessments, and short-term notes issued in anticipation of bond proceeds and grant proceeds. The act regulates other aspects of township borrowing, including the structure, features and method of a bond issue sale, including negotiated sales, ability of township officials to approve the final terms of bond issues within preset limits authorized by the township board, levy of voted debt millage, debt retirement funds set aside to repay the loan, transfer of surplus debt retirement fund monies after payment in full of a bond issue, and refunding/refinancing outstanding debt.

In 2012, the Revised Municipal Finance Act was amended to permit townships and other municipalities to borrow money and issue municipal securities to fund certain unfunded pension and accrued health care liability, subject to rigorous guidelines including a requirement that a township considering such a financing be rated AA or higher by a nationally recognized rating agency.

If a township fails to pay scheduled debt payments, the state treasurer has broad powers under the Revised Municipal Finance Act to investigate the township's fiscal affairs and develop a payment plan for the defaulted debt.

## Federal government also regulates township borrowing

The Internal Revenue Code of 1986 provides an indirect “subsidy” to townships by making the interest paid on township bond issues exempt from federal income tax, if the requirements of the Internal Revenue Code are met. This generally enables townships to borrow money at more favorable interest rates than private individuals or businesses.

Federal tax law requirements are very extensive and regulate all aspects of municipal borrowing, including the amount that may be borrowed, when loans should be incurred, how townships must handle loan proceeds before they are expended, how townships should handle money set aside to repay the loan, and how existing bond issues can be refinanced.

Over recent years, the Internal Revenue Service has conducted audits of municipalities to determine compliance with federal tax requirements. In addition, the IRS has paid an increasing level of attention to compliance by townships and other municipalities with federal tax requirements that apply after the issuance of a tax-exempt bond. In late June 2013, the IRS issued Publication 5091, which outlines the need for compliance with post-issuance federal tax requirements; non-compliance could cause bonds or notes to lose their tax-exempt status. In addition, Publication 5091 encourages

issuers of tax-exempt obligations to adopt written procedures to promote post-issuance compliance. Townships that issue tax-exempt debt should consult with bond counsel to ensure they maintain compliance with all applicable requirements.

Arising out of the recent sequestration—budget and federal debt limit negotiations that dominated the U.S. Congress in recent months—have been several proposals to modify or totally eliminate the tax-exempt status for municipal obligations, including township bonds, notes and other types of debt instruments. If tax-exempt status is not available for a township obligation, a township should still be able to borrow money at interest rates that are taxable under federal tax law. However, this, in all likelihood, will increase the interest rate townships will have to pay on borrowed funds. As of *Township Focus* press time, this subject remains hotly debated and townships considering funding capital improvements are well advised to monitor these developments—which could impact the interest rate at which a township may be able to borrow money, thus affecting the project cost.

In addition to federal tax exemption, interest on Michigan municipal bonds, notes and other debt instruments is also generally exempt from State of Michigan income taxation.

Because township bonds and other loan obligations are securities, they are also regulated by federal securities laws. While municipal bonds, as a general rule, do not have to be registered with the Securities and Exchange Commission—like stock offerings or other corporate securities—a township, when proposing to borrow money, must provide all material information to the lender or potential bond purchaser that a

## Consultants can assist with borrowing

A bond attorney can help a township comply with the legal requirements for borrowing money and selling bonds, as well as provide a written legal opinion that the bonds are valid and the interest paid is exempt from federal and state income taxes. A bond attorney also typically assists the township in preparing applicable resolutions, ordinances, election proceedings, public hearing notices and other matters related to financing capital improvements. The favorable written opinion of a bond attorney is routinely required to be provided by a township to the purchasers and/or underwriters of township bond and note issues.

A registered municipal advisor can help a township determine the best method of financing a proposed project, file the paperwork and applications required by the Michigan Department of Treasury, and determine whether a bond issue should be insured by a municipal bond insurer or if the township should secure ratings from one or more major rating agencies. The advisor can also prepare recommendations for user rates that need to be implemented to repay a bond issue for a township water or sewer system, and also assists with the sale of the bonds.

reasonable investor may need to decide whether to invest in a township bond issue. These requirements are more extensive when a township borrows more than \$1 million in a single transaction.

In reaction to the financial downturn over the last four to five years, the Dodd-Frank Wall Street Reform Consumer Protection Act was signed into federal law in July 2010 and contains some of the most significant changes to financial regulation since the Great Depression of the 1930s. The Dodd-Frank Act has affected the municipal bond industry with such direct and indirect effects as requiring municipal advisors to be registered with the Municipal Securities Rulemaking Board. Ironically, the definition of a “municipal advisor” has still not been finalized; however, proposed SEC rules exclude attorneys providing legal advice or traditional legal services and engineers providing engineering advice. In addition, underwriters for negotiated offerings of municipal securities are now required to provide broad disclosures to local governmental bond issuers. Also, the SEC issued a comprehensive report on the municipal bond market in August 2012 with a heavy emphasis on the need for better disclosure of financial information of municipalities issuing municipal debt. Consistent with the Dodd-Frank theme, the government’s goal with these and other changes is to minimize defaults on municipal obligations and thereby protect investors that purchase municipal bonds and notes.

### Numerous borrowing methods are available

Michigan law provides a number of alternative methods for townships to finance local public improvements. There are more than 30 enabling statutes that authorize townships to borrow money and issue debt instruments for various types of public improvements. Township borrowing may take the form of a bond, note, installment purchase agreement or lease purchase agreement. A debt instrument establishes the township’s obligation to repay a specific sum of money at a specific interest rate on specified dates. Typically, the sources of repayment and type of collateral pledged to secure repayment are also specified in the debt instrument.

Types of debt instruments, which may be issued by or on behalf of townships, include the following:

**General obligation bonds.** These bonds are backed by the authority to raise taxes. The Michigan Constitution and Unlimited Tax Election Act (MCL 141.161, *et seq.*) require all general obligation bonds supported by an increase in millage over allocated or charter limits to receive prior voter approval. Sometimes called “full faith and credit” bonds, these bonds pledge tax revenues to the bond purchaser to satisfy the debt. General obligation bonds are generally viewed by potential municipal bond investors as the most secure debt instrument and, therefore, bear the lowest interest rates.

PA 116 of 1923 (MCL 41.416, *et seq.*) authorizes general law townships to issue general obligation bonds to finance township halls, fire stations, libraries and other township public buildings. The bonds may not exceed 5 percent of a township’s assessed value. PA 359 of 1947 (MCL 42.14a, *et seq.*) authorizes charter townships to finance these same improvements.



PA 111 of 1956 (MCL 247.351, *et seq.*) authorizes townships to issue general obligation bonds to fund highway improvements, including bridges, drains and traffic control devices. Improvements are made by the county road commission pursuant to a contract with the township. Bonds cannot exceed 10 percent of the township’s assessed value.

General obligation bonds are a good way to finance improvements if the township needs a millage increase to repay debt service on the bonds. When voters approve a ballot proposal to issue the bonds, the township board can proceed with the capital improvement project with a high level of confidence that the project is supported by the public.

**Capital improvement bonds.** A township is authorized to issue capital improvement bonds under the Revised Municipal Finance Act (MCL 141.2517) to pay the cost of any capital improvement item provided that the principal and interest on the bonds is payable from existing sources of revenue, including currently authorized tax levies. Qualifying capital improvements include land and any item of real or personal property, which is subject to depreciation under generally accepted accounting principles.

The issuance of the capital improvement bonds is subject to a right of referendum, which is commenced by publication in a newspaper of general circulation in the township of an advertisement that must be at least a quarter-page in size and states the township’s intent to issue the bonds. If during the 45-day referendum period that follows publication, petitions are signed by not less than 10 percent of registered electors in the township and filed with the township clerk, the township may not proceed with issuance of the bonds until approved by a vote of the township electors at a township election.

Capital improvement bonds may not exceed 5 percent of the state equalized valuation of the township.

**Revenue bonds.** These bonds are backed by a specific fixed revenue source, such as user fees. The Revenue Bond Act, PA 94 of 1933 (MCL 141.101), does not require voter approval prior to issuing the bonds, unless a referendum petition is filed. The referendum period is 45 days following publication of a referendum notice, and petitions requesting



an election on issuing bonds must be signed by 10 percent of the registered voters of the township. If sufficient petitions are filed with the clerk, the bonds may not be issued until approved by voters at a township election.

Revenue bonds may be issued for many types of public improvements, including housing facilities, garbage and rubbish disposal, public water systems, sanitary and storm sewers, utility, cable television and telephone systems, parking facilities, hospitals, and bridges.

Typically, townships use revenue bonds to finance sewer or water systems that only service specified township areas. A revenue bond is excluded from the determination of the 10 percent debt limit applicable to charter townships.

Revenue bonds are a good way to finance eligible improvements without exposing the township's general fund to risk because the bonds are fully repaid by user fees. Since a township typically does not pledge its full faith and credit to back the payment of revenue bonds, these bonds often bear a higher interest rate than general obligation bonds.

Another disadvantage to using a revenue bond is that the right of referendum applies to all township residents even though the project may only benefit a portion of the township. For instance, a township may use revenue bonds to finance a sewer system installed around a lake area. While only those residents who live in the lake area benefit from the improvement, any township resident can sign a petition requesting an election to vote on the bond issue.

**Special assessment bonds.** A special assessment bond is used to finance the cost of improvements for which the township has levied special assessments against specially benefited properties. Typically, this includes establishing as a special assessment district an area of the township benefited by such improvements as a road improvement project or sewer system installation.

PA 188 of 1954 (MCL 41.721, *et seq.*) authorizes townships to issue special assessment bonds to fund public

improvements, including storm and sanitary sewers, public water systems, public and private roads, sidewalks, public parks, bicycle paths, lighting systems, and aquatic weed control. PA 33 of 1951 (MCL 41.801, *et seq.*) authorizes townships to issue special assessment bonds to fund the purchase and housing of police and fire equipment.

While it is typical to have the township pledge its full faith and credit to further secure special assessment bonds, the bonds may not be issued for an amount greater than the special assessment roll approved for the project. A special assessment bond is subject to voter approval if it exceeds 3 percent of the township's assessed valuation.

A township that proposes to specially assess the cost of sewer improvements around a lake, for example, may find that the size of the project causes the special assessment roll to exceed 3 percent of the township's assessed valuation—an annual limit for issuing special assessment bonds imposed by the Revised Municipal Finance Act. In this instance, rather than fund the project using special assessment bonds, which would be subject to an election to override the 3 percent limit, the township may consider using contract bonds to finance the project.

**Contract/assessment bonds.** These are bonds issued by a separate entity on behalf of the township, such as a building authority, a joint sewer and water authority, or the county. PA 31 of 1948 (MCL 123.951, *et seq.*) authorizes a township to incorporate a building authority, which may issue bonds pursuant to a contract with the township to finance and construct public buildings, parking lots, structures, recreational facilities and stadiums. The contract is subject to a right of referendum. Two or more townships may incorporate a joint building authority to finance a single project, such as a jointly funded fire station.

PA 233 of 1955 (MCL 124.281, *et seq.*) authorizes two or more townships or other municipalities to establish a joint authority, which may issue revenue or contract bonds for sewer and water systems. The contract supporting the contract and revenue bonds is subject to a right of referendum.

PA 185 of 1957 (MCL 123.731, *et seq.*) and PA 342 of 1939 (MCL 46.171, *et seq.*) authorize a county to issue bonds for public water and sewer projects pursuant to a contract with the township. An Act 342 contract is subject to a right of referendum; an Act 185 contract is not. Deciding whether to request a county to issue bonds under Act 185 or Act 342 for a water or sewer project can depend on whether the township wants to avoid a referendum petition or be subject to a right of referendum. A township considering an Act 342 project may be concerned that any registered township voter may sign a referendum petition or vote in an election even if the project only includes a small portion of the township to be served by a sewer system, for example.

Contract bonds are a good way to finance improvements if a township is limited by the 3 percent annual limit on special assessment bonds. A township can also combine different revenue sources—such as special assessments, rates and

charges—to repay bonds. Bonds issued by a county are particularly attractive to a township because they can generally be sold at lower interest rates than a similar township issue, thereby benefiting township residents and property owners.

Assessment bonds are issued by a county drainage district for storm sewers under the Drain Code of 1956 (MCL 280.1, *et seq.*). The drain proceedings may be commenced by a township petition, and in turn, the township receives a drain assessment for the cost. The township can levy special assessments on benefited properties to defray the county drain assessment.

**Tax increment bonds.** Tax increment financing funds public improvements, infrastructure or other activities within a designated area or district in a township. As industrial, commercial or other property growth occurs in the district, the assessed property valuations and property taxes increase. Subject to specified limitations, a tax increment financing authority “captures” from the local taxing units the additional ad valorem property tax revenues resulting from the increase in taxable value to pay the cost of completed or future improvements, or to pay off bonds issued to finance the improvements.

Townships, within specified statutory limits, may utilize tax increment financing under a variety of state laws. Options include establishing a downtown development authority authorized by PA 197 of 1975 (MCL 125.1651, *et seq.*), a local development finance authority authorized by PA 281 of 1986 (MCL 125.2151, *et seq.*), a brownfield redevelopment authority, authorized by PA 381 of 1996 (MCL 125.2651, *et seq.*), a corridor improvement authority authorized by PA 280 of 2005 (MCL 125.2871, *et seq.*) or a water resource improvement tax increment finance authority authorized by PA 94 of 2008 (MCL 125.1771, *et seq.*). The specific requirements of each act must be carefully implemented to create a valid authority and position a township to use tax increment financing.

**Installment purchase contracts/agreements.** PA 99 of 1933 (MCL 123.721, *et seq.*) authorizes townships to enter into contracts or agreements to purchase real or personal property for public purposes on an installment basis without qualification or approval under the Revised Municipal Finance Act. The installment contract is limited to 15 years or the useful life of the acquired property, whichever is less. The outstanding balance of these contracts cannot exceed 1.25 percent of a township’s taxable value. Such contracts are not subject to election or right of referendum.

An installment purchase agreement or contract is a flexible way to finance real and personal property for relatively small capital acquisitions, provided that a local bank or the equipment vendor is willing to provide financing. Using an installment purchase agreement or contract to borrow money is typically more expedient and less expensive to implement than a township bond issue.

**Title retaining/secured contracts.** PA 205 of 1964 (MCL 141.451, *et seq.*) allows townships to purchase fire trucks, apparatus and equipment by entering into title retaining or secured contracts. The contracts cannot exceed six years or the estimated useful life of the purchase, whichever is less. State qualification or approval under the Revised Municipal Finance Act is not required.

This method is an effective way to finance fire equipment if the equipment vendor requires that it retain title until receiving payment in full of the debt. The disadvantage is that the loan must be paid off in six years or less. In contrast, using an installment purchase agreement under PA 99 provides the township the useful life of the equipment, if longer than six years, to pay off the debt.

**Short-term anticipation note borrowing.** The Revised Municipal Finance Act provides several methods for townships to issue short-term notes in anticipation of permanent financing. A township may issue bond anticipation notes in anticipation of the proceeds of a long-term bond issue. The notes may be sold for a maximum term of three years and may not exceed 50 percent of the principal amount of the proposed bond issue. The notes must be paid within 60 days after the bonds are issued. Bond anticipation notes may be considered when the township does not have adequate funds on hand to pay consultants to design an extensive project, such as a sewer system, but the township does not want to sell the long-term bonds until the project is designed and construction bids are received. (MCL 141.2413)

The Revised Municipal Finance Act also authorizes short-term notes to be issued in anticipation of the receipt of state or federal grants. These notes may be issued for up to 50 percent of the amount yet to be received from the grant, provided that a written grant contract has been accepted by the township board. The notes are secured by a pledge of the grant proceeds. (MCL 141.2415).



## More than one way to fund a capital improvement

As noted, there are many statutes which authorize townships to fund various types of capital improvements. It is often important for a township to select the right statutory alternative to fund a capital improvement that best fits the situation. For example, in deciding to build a new township hall, the township board may want to submit a ballot proposal to township electors to vote on the question or, in the alternative, the township board may wish to submit a ballot proposal to township electors only if a sufficient amount of township electors circulate a petition pursuant to a right of referendum. As another alternative, the township board may simply decide that the elected township board should make the decision without affording an opportunity for a township-wide vote.

## Refunding existing debt may help

Over the past year or two, interest rates on municipal bonds and notes have been at or near historical lows. As a result, many townships and other municipalities have taken advantage of these low rates by refinancing existing bond issues and other debt by issuing new “refunding bonds.” The general rule for refinancing bond issues is provided by the Revised Municipal Finance Act (MCL 141.2611) which, in effect, requires that a township shall not refinance any part of its outstanding debt unless there is savings demonstrated when

the annual debt service requirements (i.e. principal and interest) on the new refunding bonds, including the cost of issuing the new refunding bonds, are compared to the debt service requirements on the higher interest rate debt that has been refinanced. Townships have taken advantage of refinancing by refunding existing debt to lower their annual requirements to pay principal and interest and, to thereby free up cash that can then be reallocated to fund the cost of capital improvements either on a pay-as-you-go program or by covering all or a portion of the cost of debt service on new bonds issued to fund capital improvements.

## Providing services residents deserve

With the proper use of capital improvement planning and funding tools, townships, even in economically challenging times, can consider how best to provide the services and functions that their residents and community expect and deserve.



**James K. White**, Attorney

Mika Meyers Beckett & Jones PLC,  
Grand Rapids

Contact White at (616) 632-8000 or via email  
at [jwhite@mmbjlaw.com](mailto:jwhite@mmbjlaw.com).

## Legal counsel that helps local governments work effectively.



Our Local Government Law practice group works with local governments and public authorities to ensure the efficient and cost-effective delivery of vital public services. We provide specialized legal expertise in areas as diverse as zoning and land use planning, bond issues, special assessments, tax increment financing, DDA's and other public authorities, labor contracts and arbitration, employee benefits, elections, environmental regulation and many other matters affecting local governments. For more than 50 years, skilled Mika Meyers attorneys have helped public-sector entities meet the ever-increasing demands of their constituents and communities.

For more information on how our Local Government Law team can assist your community, visit [mmbjlaw.com](http://mmbjlaw.com).

**Mika Meyers**  
Beckett & Jones PLC

900 Monroe Ave NW Grand Rapids, MI 49503  
[mmbjlaw.com](http://mmbjlaw.com) 616-632-8000

