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FUND TRANSFERS AND DELAYED LAST CHANCE: STATUTORY AUTHORITY AGAIN DUE TO EXPIRE AT END OF FISCAL YEAR

In April 2020, we cautioned that an important tool for school districts in fund management was due to expire. But at the last minute, the General Assembly granted a reprieve, extending certain fund transfer authority for one more year. However, it is now April again, and no bill to date in the 2021 session has included any further extension of this authority. So once again, districts would be wise to employ that tool before the end of the fiscal year in order to maintain flexibility in the use of scarce resources and, even more important, to avoid costly tax objection refunds in the future.

Section 17-2A of the School Code has long provided a useful



mechanism for moving money between any of a school district's three principal operating funds: Educational, Operations & Maintenance, and Transportation. Since 2017, transfers from the Tort Immunity Fund to the Operations & Maintenance Fund have also been permitted. The procedural requirements of notice and a public hearing remain. But the statute has also contained an ill-defined usage limitation: a transfer may be ***“made solely for the purpose of meeting one-time, non-recurring expenses.”*** The statute does not define “one-time, non-recurring expenses,” nor are there court cases or administrative rules clarifying the meaning of this use limitation.

However, since 2003, the meaning of the use limitation has been irrelevant because Section 17-2A has also included a sunset provision temporarily waiving application of the use limitation to a specific date. And, as the sunset date has approached on each occasion since 2003, the General Assembly has acted to push the date further out. But as of today, there is no pending legislation under consideration to extend the sunset provision of the use limitation in Section 17-2A beyond June 30, 2021.

The need for this transfer authority has somewhat lessened with the removal a few years ago of the specific rate limitation for the Educational Fund for those districts subject to the Property Tax Extension Limitation Law (PTELL or the “tax cap”). Still, that action does not address districts in non-PTELL counties or existing balances in any district throughout the State. It remains highly advantageous for school districts to be able to move money between the operating funds without the usage limitation.

So right now, every district should be closely examining the projected year-end balances in their Educational, Operation & Maintenance, Transportation, and Tort Immunity Funds. If there will be insufficient money in one of those funds in the coming year, a transfer now, rather than after June 30, should be made. Further, if there is much more than enough money in one of those funds, it is critical to move the excess out now. An allegation of excessive balances in school district funds is one of the most common types of taxpayer rate objections and can lead to severe revenue losses due to tax refunds.



Going forward, unless there is yet another change in the law, Section 17-2A transfers should still be available after June 30, but only for more limited purposes, and arguably not for routine fund balance management. Because of this, more extensive use of the Educational Fund in PTELL counties is strongly advised.

School district administrators should also be aware of another fund transfer mechanism which has a sunset provision due to expire this June 30. Section 17-2.11(j) permits the transfer of unused life safety revenues to the Operations and Maintenance Fund, subject to a public notice and hearing like the one in Section 17-2A. This transfer can be accomplished without an offsetting tax abatement if it is to be used for building repair work, but only until June 30, 2021. In the past, that deadline has been extended in tandem with the one discussed above, but also like that one, might not be pushed back this time. ***We recommend, therefore, that you act soon to move any excess Life Safety Fund money to Operations and Maintenance before the end of the fiscal year.***

Published April 20, 2021

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If you have any questions or would like assistance in accomplishing timely fund transfers, please do not hesitate to contact one of our attorneys.

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Published April 20, 2021