

## SENATE BILL 1077 CONSTITUTIONAL TESTIMONY

Mr. Chairman and Committee Members:

Thank you for the opportunity to testify today about Senate Bill 1077. By way of introduction, I am Jeff Soles, bond and election attorney with Thrun Law Firm. I have been practicing in the bond and election area for over 24 years, the last 20 of which have involved public school districts in the State of Michigan. The Thrun Law Firm is a familiar name in that it has provided bond and election law and other legal services to public education institutions - both K-12 and post-secondary - in the State of Michigan for nearly 70 years. Since 1955, Thrun Law Firm has provided technical legal assistance to the Legislature, upon request, for many legislative initiatives involving public education including but not limited to, assisting with the drafting and revision of the 1955, 1976 and 1996 school codes, and the 1966 Community College Act.

Senate Bill 1077 would significantly and detrimentally alter the Act that governs the School Bond Qualification and Loan Program and how the program is administered for hundreds of Michigan school districts. The Program, as you are all aware, is mandated by Article IX, Section 16 of our Michigan Constitution. The Program, in one form or another, has been around for over 60 years, helping school districts meet their capital improvement needs while limiting the millage impact on local taxpayers. The "gist" of the Program permits school districts to cap debt millage at a reasonable level to their local taxpayers and to borrow any excess debt service needs from the State in the early years of a bond issue. Such a school district would then continue to levy the capped millage in later years to payback the State for the loan. Importantly, these are loans, not grants or subsidies from the State of Michigan to school districts. Those loans are repaid in full, with interest, by school districts, and, in compliance with recent amendments made less than two years ago, with only a few exceptions, the loans are repaid within the timeframe required by law. Michigan is one of only eight states that do not provide any subsidy for the construction of K-12 school facilities. - Michigan only provides this loan Program.

Article IX, Section 16 grants a school district the discretion to elect to borrow from the State for a portion of its debt service payments so long as that school district is levying the statutorily prescribed millage - not to exceed 13 mills. Currently, and under the proposed Senate Bill 1077, that statutorily prescribed millage is 7 mills. So as long as a school district is levying at least 7 mills, that school district is constitutionally given the right to borrow from the State and, as it states in Article IX, Section 16, once the school district has elected to borrow the State shall lend the funds to the school district for its debt service payments. The "Cap" provision of Senate Bill 1077 violates this sole constitutional prerequisite to a school district electing to borrow from the State under the Program.

By removing the sunset of the \$1.8 billion cap (set to expire on June 30, 2016), Senate Bill 1077 would prohibit any new school district bond issue from planning to borrow to meet debt service payments once the size of the Program exceeds \$1.8 billion. It is estimated that the \$1.8 billion cap will be reached as early as May 2015 and, if Senate Bill 1077 is passed in its present form, the Program will remain above that cap for over 60 years. That would be over 60 years with no new school district bond issue being permitted to elect to borrow from the State under the Program, even if the school district is levying at or above the minimum prescribed level as provided by Article IX, Section 16. The proposed \$1.8 billion cap for the Program clearly violates Article IX, Section 16.

The last constitutional issue I will discuss is that the proposed delegation of Legislative authority and the proposed grant of discretion in this context is constitutionally impermissible. Senate Bill 1077 proposes to delegate Legislative authority mandated by Article IX, Section 16 to the Department of Treasury. This bill would also grant broad discretion to the State Treasurer (who will delegate this function to the Department's employees or appointed officials) to administer the Program. Currently, Act 92 - in compliance with Article IX, Section 16 - contains objective, Legislatively-established criteria. Once those criteria have been met by a school district, current law requires the State Treasurer to permit that school district to participate in the Program. Senate Bill 1077 maintains much of the constitutionally permissive objective criteria under current law. However, Senate Bill 1077 adds additional subjective criteria exercisable by the State Treasurer or, most likely, employees or appointed officials of the State Treasurer. The final decision regarding a school district's participation in the Program is changed from an obligatory system if all Legislatively-established criteria are satisfied to one that is entirely discretionary on the part of the State Treasurer, its employees or appointed officials. Most troubling, that discretion can be exercised after voters have approved a bond issue, and even after bonds have been sold in the market, either of which could fundamentally change the structure of the bond issue after voter approval. This delegation and grant of broad discretion violates Article IX, Section 16, since those functions are specifically and constitutionally reserved to the Legislature by Article IX, Section 16.

In closing, the significant constitutional issues surrounding Senate Bill 1077 should be addressed before this bill proceeds. I recommend that this body to seek a formal opinion from the Attorney General's office regarding the Constitutionality of the \$1.8 billion cap provision and the discretionary provisions of Senate Bill 1077 before moving this bill out of committee. Again, thank you for the opportunity to testify on this important matter.