OFCC

OHIO FACILITIES CONSTRUCTION COMMISSION

OSFC Lease-Purchase Local Share Study

March 29, 2016

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I. Introduction

In June 2015, Amended Substitute House Bill 64 of the 131st General Assembly included a statutory directive in §285.80, titled Funding of District Share of Basic Project Cost. The directive called for the Ohio School Facilities Commission (OSFC), in consultation with the Office of Budget and Management (OBM), to prepare a study of the benefits, risks and impacts associated with a school district funding its share of the basic project cost of a school facilities project under Chapter 3318 of the Ohio Revised Code (ORC) with cash-on-hand resulting from a lease-purchase agreement or certificate of participation[1] under Section 3313.375 of the ORC that is not subject to voter approval.

§285.50 also included a prohibition during the time period of the study for a school district to fund its share of a basic project cost of a school facilities project under Chapter 3318 of the ORC with cash-on-hand resulting from a lease-purchase agreement or certificates of participation (COPs) under ORC Section 3313.375 that is not subject to voter approval except for the following limited circumstances: (1) funding a district's share of an increase in the basic project costs approved under ORC Section 3318.083, (2) funding a locally funded initiative (LFI) on a school facilities project, or (3) funding a project under the Expedited Local Partnership Program established under either ORC Section 3318.36 or 3318.46.

In accordance with the legislative directive, staff from the Ohio Facilities Construction Commission (OFCC)[2] and OBM have worked to conduct the review, which OFCC and OBM staff have captioned as the OSFC Lease-Purchase Local Share Study.

II. Study Methodology

OFCC and OBM staff made up the core of the primary study group and met initially to set up the framework for the study. After several internal sessions, the OFCC and OBM staff identified and adopted an approach designed to obtain maximum input related to the directive to consider benefits, risks, and impacts associated with a school districts use of lease-purchase proceeds to fund its local share.

OFCC and OBM staff thereafter issued invitations to a broad spectrum of potential stakeholders and interested parties, as well as providing a notice on OFCC's website seeking input. The invited stakeholders included legal and bond counsel typically representing school districts, financial organizations working in the school facility funding arena, school districts, several school district association groups (Ohio School Board Association, Ohio Association of School Business Officials, and the Buckeye Association of School Administrators) and a financial watchdog group, The Buckeye Institute for Public Policy Solutions.

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[1] Certificates of participation (COPs) are typically considered a type of lease -purchase financing arrangement, where the key difference is that it is a public offering to multiple investors similar to a bond offering.

[2] OSFC is an independent agency of the State within OFCC and all staff of the OSFC are OFCC employees.

Those invitations presented an opportunity for each of the groups to meet individually with OFCC and OBM staff to discuss the study and provide input. The invitations also requested that each of the participating stakeholders provide responses to the following questions (depending on its applicability), as well as any additional information that the stakeholders believed useful:

1. What are the benefits to School Districts that use lease-purchase or COPs proceeds for their portion of a local share of an OSFC project?

2. What are the risks to School Districts that use lease-purchase or COPs proceeds for their portion of a local share of an OSFC project?

3. What are the costs (both first cost and long term costs) for a School District using (a) lease-purchase arrangement or (b) COPs versus a more typical voted bond arrangement?

4. If a lease-purchase or COPs arrangement is found an appropriate financing vehicle for a local share, should the ORC be revised to provide for it specifically?

A listing of the responding stakeholder groups and submitted information is set forth in Appendix A and B, respectively.

In addition to the various stakeholder groups, OFCC and OBM staff also reached out to the Auditor of State seeking input.

After meeting with the stakeholders and further reaching out to individual school districts (School District Questionnaire is set forth in Appendix C), OFCC and OBM staff compiled and considered the submitted information and drafted a study for OSFC consideration.

III. Background Information

A. Ohio School Facilities Commission

The OSFC was created in 1997 in ORC Section 3318.30 for the purpose of providing state funding to assist school districts with the acquisition or construction of school facilities. OSFC administers the programs set forth under ORC Sections 3318.01 to 3318.71. In 2012, the General Assembly placed the OSFC within the newly created OFCC. OSFC consists of seven members, three of whom serve as voting members. The voting members include the director of OBM, the director of the Department of Administrative Services, and the Superintendent of Public Instruction for the Department of Education or their respective designees. The non-voting members consist of two members from the House of Representatives and two from the Senate, and the appointments from each branch are required to be members of different political parties. Non-voting members serve for the biennial legislative session in which they are appointed.

1. Classroom Facilities Assistance Program

ORC Chapter 3318 provides many programs for school district participation, but the program most relevant to this study is the Classroom Facilities Assistance Program (CFAP). Under CFAP, OSFC performs periodic assessments of the classroom facility needs of Ohio's school districts, determines the cost to each district of constructing, acquiring, or renovating facilities, and provides state assistance for meeting those needs. The board of education of each school district served is required to pay a portion of the basic project cost, which is known as its local share.

A school district's local share amount depends on its placement on a yearly eligibility ranking list compiled by the Ohio Department of Education. The total of the value of all taxable property in a district is divided by the number of students the district serves. This figure is known as the "valuation per pupil." A school district with a large valuation per pupil is considered better able to raise funds locally, so it is both lower in priority and receives a lower state share of funding.

ORC Chapter 3318 provides several means for a school district to raise its local share of the project cost. Most common throughout the program's history have been voter approved bond issues pursued under either ORC Section 3318.06 or ORC Section 133.06.[3] Other mechanisms exist besides traditional voter approved tax levies for a school district to raise its local share including: (1) a combination bond issue and tax levy under ORC Section 5705.218, (2) bonds supported by an ongoing permanent improvement tax, (3) bonds supported by a school district income tax, and (4) locally donated contributions.

2. Locally Donated Contributions

For this study, locally donated contributions are the relevant consideration. ORC Section 3318.084(A)(1) authorizes a school district board to apply any locally donated contribution toward a school district's portion of the basic project cost of a project in CFAP to reduce the amount of bonds the district otherwise must issue in order to receive state assistance under those sections.

ORC Section 3318.084(C)(2) defines locally donated contribution to include "any irrevocable letter of credit issued on behalf of a school district or <u>any cash a school district has on hand</u>, including any year-end operating fund balances, that can be spent for classroom facilities, either of which the school district board has encumbered for payment of the schools district's share of [its CFAP project] and either of which has been approved by the commission in consultation with the department of education." (Emphasis added).

Many school districts and their representatives interpret ORC Section 3318.084's "any cash a school district has on hand" to mean any cash that is raised regardless of the source such that

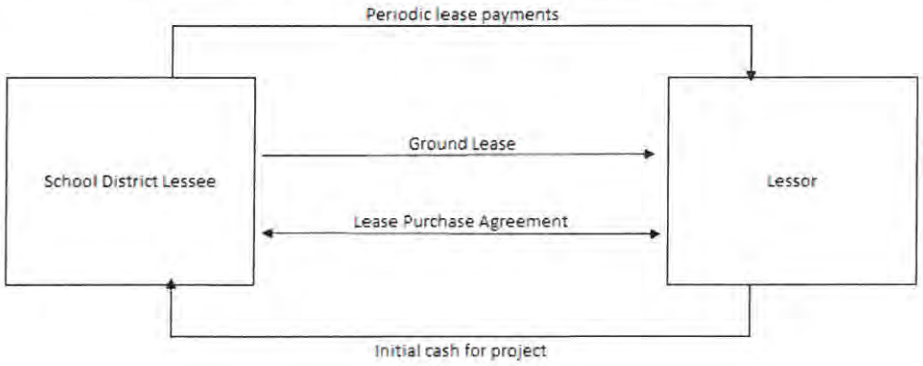
[3] For purposes of this study, the primary difference between ORC Section 3318.06 bond issues and those under ORC Section 133.06 is that Section 3318.06 limits the amount of money raised to the cost of the building and land.

cash-on-hand could result from a district taking a loan to make its local share, if that authority otherwise existed. School districts and their representatives then rely on ORC Section 3313.375 for the authority to enter into a lease-purchase arrangement to raise the "cash-on-hand." No explicit authority exists under ORC Chapter 3318 for a school district to use lease-purchase proceeds for its local share.

B. Lease-Purchase Financing Arrangements and School District Authority

1. Lease-Purchase Financing Background

Lease-purchase financing permits public bodies to pay for facilities over time, at tax exempt rates, without subjecting themselves to constitutional and statutory debt restrictions. A lease-purchase arrangement is effectively an installment sale agreement (see Appendix D for a further discussion of lease-purchase financing arrangements). Under a lease-purchase financing arrangement, a school district makes installment payments that include a principal and interest component, and, at the end of the lease term, the school district receives title to the leased property. The diagram below sets forth a private placement lease-purchase structure.



2. School District Lease-Purchase Authority

For school districts participating outside of OSFC's program, ORC Section 3313.375 provides them explicit authority to use lease-purchase to fund its construction of school facilities.[4] ORC Section 3313.375 authorizes school districts, educational service centers, or community schools to enter into lease-purchase agreements providing for the construction or improvement and eventual acquisition of facilities or improvements to facilities. Under ORC Section 3313.375, lease-purchases for school buildings or building improvements must be structured as a series of one year obligations totaling not more than the number of years equivalent to the useful life of the

[4] Am. Sub. H.B. No. 64 also amended ORC Section 3313.375. Any references to ORC Section 3313.375 are to the as amended version.

asset, renewable for up to 30 years. The annual renewal must be conditioned upon the school district's board's appropriation of funds for that fiscal year's lease payments.

A school district's use of ORC Section 3313.375 financing does not require voter approval and is not subject to the debt limits typically existing on un-voted school district general obligation debt.

IV. SUMMARY OF BENEFITS, RISKS, AND IMPACTS ASSOCIATED WITH LEASE-PURCHASE FINANCING

Based on the input received from the series of stakeholder meetings as well additional research by OFCC and OBM staff, a summary of the noted benefits, risks and impacts associated with the lease-purchase agreements is set forth below (see Appendix A for a more detailed description of the input from the stakeholder meetings).

A. Benefits

Noted benefits of using lease-purchase financing for a local share of an OSFC project include

- *Flexibility*
- *Speed*
- *Reduced Taxpayer Burden for Facilities Construction*

Flexibility

Stakeholders noted flexibility for school districts as the primary benefit resulting from allowing proceeds from lease-purchase financing to serve as a school district's local share.

School districts, in theory, have many ways to fund construction of school facilities such as unvoted debt within allowable debt limitations, voted debt, permanent improvement levy funds, income tax receipts, operational savings, payment in lieu of tax agreements, and sale of existing assets. But practically, the options many school districts find themselves with are limited. For example, debt capacity may have been reached, voters may have rejected a tax increase at the ballot box, operating and other fund surpluses may not be large enough on their own to support a project. Advantages to a school district that pursues lease-purchase financing over a traditional bond issue is that lease-purchase financing does not require voter approval and is not subject to the 1/10th of 1% limit on un-voted school district general obligation debt.

Lease-purchase financing provides school districts with another option. And sometimes, school districts find it is the only tenable option to construct or update facilities.

Speed

Using lease-purchase proceeds for their local share also provides school districts with a quicker option than more traditional voted bond financing. Obtaining more traditional voted bond financing of school construction is a lengthy process. From preparing the ballot issue to receiving

final voter approval can take several months, and it is always dependent on the election cycle. During this time, interest rate increases and inflationary pressures could lead to increased project cost. Lease-purchase agreements typically allow execution in far less time and are not dependent on the election cycle.

Reduced Taxpayer Burden for Facilities Construction

Another benefit to school districts noted consistently in the stakeholder meetings was reducing the taxpayer burden for facilities construction. The articulated position suggested that if the goal of a school district (and its board) is to keep taxpayer burden as low as possible, then a school district could use lease-purchase financing to construct a facility without seeking or issuing voter-approved debt backed by increased taxes. School districts may identify an existing and predictable funding source that could be used to make the annual payments required on a lease-purchase agreement. For example, the general fund, an existing tax, or other revenue sources could each be used to make the annual payments.

Many school district boards of education prioritize the needs of the community while keeping taxes as low as possible. Lease-purchase financing may help school districts meet this goal. For example, as the state moves up the equity list, wealthier school districts enter the program and may have resources available to them that other districts do not. Many of the study participants noted that if a school district can construct facilities within existing revenue sources, the district should not be required to ask the taxpayers to shoulder an unneeded tax increase. Existing revenue sources such as donations, endowments, and end-of-year cash balances may not cover a school district's entire local share, but a school district may be able to plan for and appropriate annual payments of a lease-purchase financing from those same sources.

B. Risks

Noted risks of lease-purchase financing include

- *Loss of Facility*
- *Reduced Liquidity and Predictability*
- *Loss of Transparency*
- *Subversion of Voter Intent*

Loss of Facility

In the event of a default on a lease-purchase agreement, the school district faces termination of the lease and loss of the use of the asset, that is, a default-repossession. This loss of possession and use of the facility is relevant both to school districts and the State. For the school districts, it could mean the loss of the school building. For the State, it impacts the State bonds used to fund the facility and could cause loss of the State's investment. To date, we are unaware of any school districts that have defaulted on an agreement and faced actual loss of possession.

Stakeholder participants noted that the only loss of possession due to default in Ohio occurred on a township building and resulted primarily from political issues where new leadership chose not to make further appropriations or lease payments. The actual loss of possession for a school building is viewed by the market as somewhat remote as school facilities are viewed as essential assets for which school districts will appropriate the annual lease payments.

Reduced Liquidity and Predictability

Stakeholders noted that a preferable method for funding potential lease payments is through dedicated use of an uninterruptible revenue source. A school district, however, could dedicate other revenue sources to fund a lease-purchase agreement, such as operational savings due to the consolidation of buildings. That source of funds is much less predictable. In that situation, if the revenue source is reduced or other expenses increase, the school district faces reduced liquidity as it may need to divert operational funds to cover the annual lease payments. Using funds from sources that are interruptible to make lease payments reduces the predictability and flexibility to use those funds for other purposes, including potential programming.

Lack of Transparency

Another risk noted respective to lease-purchase financing was the potential lack of transparency. Because the project and proposed financing does not go to a vote, the public may never know the details before the plan is implemented. Proposals may or may not be discussed at school board meetings; they may never be discussed in an open forum.

Another potential transparency risk noted from the study participants is that school districts sometimes fail to disclose these arrangements clearly or properly in their financial statements (including footnotes), which could materially misstate a school districts financial statements.

Subversion of Voter Intent

Another risk identified throughout the stakeholder meeting process was the potential subversion of the will of the public. For example, voters may expect that when the school district's tax base increases, the increased revenues will largely be put toward operational expenses such as hiring teachers and expanding programming. If the increased revenues are used to support capital investments, then it may conflict with public sentiment. Another example results when a school district pursues lease-purchase financing of a project after the voters have rejected a bond issue for that same project. Certain stakeholders noted under this last scenario a district could not be certain whether voter rejection related to the issuance of voted debt for financing or the rejection of the underlying project itself.

It was also noted that the local school district is one of the only places in government where citizens feel they can actually voice concerns about how taxpayer funds are spent and perhaps there could be a threshold above which the public should vote for use of lease-purchase financing. Other stakeholders noted that boards of education were elected to run the day-to-

day operations of the school district and voters displeased with the performance of a school board could make different choices at the next election and that requiring the voters approve a lease-purchase financing arrangement would erode the power of a board of education in financial decisions.

C. Impacts

Stakeholders noted the following impacts to school districts when using lease-purchase financing for a school district's local share.

- *Increased Costs*
- *Investor Impact*
- *Loss of Funding Flexibility*
- *Decreased Facility Flexibility*
- *Push to Other Financial Vehicles*

Increased Costs

One of the primary impacts with using lease-purchase financing for a school district's portion of the local share is the increased cost compared to traditional bond financing. First, the cost of issuance is typically higher because lease-purchase, and specifically a COPs financing, requires additional transaction documentation and thus raises the cost of legal and other associated fees. Second, the interest rate is reportedly higher for lease-purchase or COPs-financed projects as they are considered to have a higher credit risk (risk of non-payment) than traditional bond financing. This is evidenced by the disparities in the credit rating assigned (e.g., Moody's). For example, COPs are typically rated one notch below the school district's general obligation bonds (e.g., Aa3 vs. Aa2). This one-notch distinction is reportedly to account for the risk of non-appropriation.

Investor Impact

For OSFC projects, use of a lease-purchase arrangement should occur only if there are adequate protections for the State's interest in the financing of the project.[5] As a result, any documents for lease-purchase financing, including COPs, must include language that precludes use of the possession remedy while the State's interest remains, as well as adding protections to avoid adverse federal tax impacts to the State's bonds. These required protections impact investors by leaving them without an actual remedy during the period of the State's interest.

Loss of Funding Flexibility

Lease-purchase financing reduces a school district's flexibility during the period of the required payments. For example, if a school district entered into a lease-purchase arrangement backed

[5] Protecting or preserving the State's interest necessitates OSFC's involvement, which includes review of a school district's financing documents to ensure that appropriate protections are in place before securing the funding.

by the funds from a permanent improvement levy, then instead of that voted permanent improvement levy going toward the maintenance of a school district's facilities, a certain percentage of those funds would instead go to pay down the school district's lease payment obligation.

In addition, while a lease-purchase arrangement originating under ORC Section 3313.375 is not considered "debt" for net-indebtedness purposes under the ORC, it remains a long-term obligation of the school district to repay, which is considered debt under the common definition of something that is owed or due.

Decreased Facility Flexibility

Lease-purchase financing arrangements place limitations on the facility while the financing remains in place, typically including its use or disposition. If a school district changes its master plan, and the school district wishes to sell, close, or repurpose the facility, those options may not be available under the terms of the lease-purchase agreement. Non-appropriation resulting in a default and termination of the agreement has far-reaching consequences for the school district's credit rating and future borrowing costs. Additionally, the school district may have also given a security interest in the school district's other buildings as part of the financing and that could restrict the use or disposal of those buildings. Restrictions on the school district's facilities may limit the flexibility for the school district to change course over the term of the lease-purchase agreement.

Push to Other Financing Vehicles

Another impact noted during the study's prohibition of lease-purchase financing for a district's local share is that school districts and their representatives will merely look for other financing options to fund facilities if the lease-purchase option is not available on OSFC projects. For example, school districts have started looking for alternatives to the traditional lease financing arrangements in ORC Section 3313.375, and at least one district has used a port authority to finance its approximately $95 million school facility construction. A reported benefit of the port authority transaction is that it apparently does not have the maximum 30-year term restrictions required under ORC Section 3313.375. It was also reported that the fees and costs for the port authority financing are higher than both traditional general obligation bonds and ORC Section 3313.375 financing. Whether and to what extent sufficient authority exists for port authority transactions for school district construction projects is beyond the scope of this study.

V. Study Recommendations

OFCC and OBM staff reviewed and considered a continuum of possible recommendations taking into consideration the benefits, risks and impacts of a school district using lease-purchase financing for its local share of an OSFC project ranging from making no statutory changes (i.e., the status quo) to recommending legislative prohibition on the use of lease-purchase funds as a local share on OSFC projects. Based on a review of the submitted stakeholder input and other

available information, neither of these options represent the best course of action for the State, school districts, or other potential stakeholders.

Maintaining the status quo places the OSFC and school districts in an uncertain situation, and places a substantial amount of risk upon the State. From a legal perspective, while no express prohibition exists against OSFC allowing a school district utilizing lease-purchase proceeds for its local share, there is also no explicit authority for school districts to use lease-purchase proceeds for its local share portion on an OSFC project. Instead, the authority for using lease-purchase proceeds exists based on an interpretation that "cash–on-hand" as defined in ORC Section 3318.084 means any cash, from whatever source, is eligible to be used for the local share so long as a district is able to deposit it into a fund.

But that interpretation is not clear-cut.[6] If cash-on-hand means whatever funds exist from whatever source, then there arguably exists no need for other provisions of ORC Chapter 3318 that specifically identify a mechanism for a school district to raise its local share because regardless of how a school district's funds are raised, funds once deposited would always qualify as cash-on-hand for purposes of ORC Section 3318.084.

Maintaining the status quo also puts a significant burden on OFCC staff to ensure that the appropriate protections exist for the State's interest. But OFCC is often not involved in the financing decisions of the school district or made aware of the requirements associated with the lease-purchase financing. In addition, because the status quo does not expressly allow or prohibit the use of lease-purchase financing, it allows varying interpretations which can be more susceptible to political pressures than working under a structured and principled policy and process.

By contrast, while a prohibition of the use of lease-purchase proceeds on OSFC projects provides predictability and therefore stability for both the State and school districts, it removes a substantial amount of flexibility from school districts in their effort to update facilities. From the stakeholder discussions, most school districts likely will not seek use of lease-purchase proceeds for the entirety of a local share, but desire flexibility to do so if needed within a school district's financial plan. A strict prohibition also would preclude use by those school districts that have an uninterruptible stream of income they can use to service the debt without having to burden taxpayers with an additional tax or levy.

But perhaps more importantly, a prohibition would effectively ignore the authority the legislature already provided to school districts in ORC Section 3313.375 for non-OSFC projects. In examining the benefits, risks, and impacts to a school district's use of lease-purchase proceeds, almost all of the risks and impacts noted in this study exist regardless of whether or not a school district is

[6] A taxpayer lawsuit recently attempted to challenge a school district's failure to obtain voter approval for its local share. The trial court dismissed that lawsuit for lack of taxpayer standing, and that decision was recently affirmed by the appellate court.

participating in OSFC's programs, and the legislature already provided school districts lease-purchase authority even with those potential risks and impacts.

As a result, this study finds the most appropriate outcome is to explicitly provide that a school district may use cash-on-hand funded by lease-purchase financing as long as the state has the superior lien while the State maintains an interest in the Project. To effect these changes, we recommend legislative modification to ORC Section 3318.084 to expand the definition of cash-on-hand to include proceeds resulting from a school district's authority under ORC Section 3313.375 so long as the lease-purchase financing documents and agreement contain provisions protecting the State's superior interest in the project.

If the General Assembly determines not to follow the recommendation of this study, and instead desires not to support the use of lease-purchase financing on OSFC projects, then it is recommended that the definition of cash-on-hand in ORC 3318.084 be expanded to prohibit cash obtained from lease-purchase financing.

Finally, because the General Assembly tasked OSFC with studying the benefits, risks, and impacts of using lease-purchase proceeds for a school district's local share on an OSFC project but will need time to review and weigh in on the study's recommendation, the study further recommends that OSFC adopt a resolution to temporarily continue the statutory directive's limitation on a school district's use of lease-purchase or COPs financing to fund its share of basic project cost to allow the General Assembly time to act upon the study.

Appendix A-Responding Stakeholder Groups and Submitted Information

Stakeholder	Organization	Representative
Bond Counsel		
	Bricker & Eckler LLP	Rebecca Princehorn
	Dinsmore & Shohl LLP	Marc Kamer
	Dinsmore & Shohl LLP	Jennifer Blaser
	Frost Brown Todd LLC	Emmett Kelly
	Riley Law Firm LLC, The	David Riley
	Squire Patton Boggs (US) LLP	Ryan Callender
Financial Advisors		
	Bradley Payne LLC	John Payne
	Fifth Third Securities	Kathleen Clark
	Rockmill Financial	David Conley
	Stifel Financial Corp.	Patrick King
Public Policy Think Tank		
	Buckeye Institute for Public Policy Solutions, The	Greg Lawson
School Associations		
	Buckeye Association of School Administrators	Tom Ash
	Ohio Association of School Business Officials	David Varda
	Ohio Association of School Business Officials	Barbara Shaner
	Ohio School Boards Association	Jennifer Hogue
Responding School Districts		
	Bryan City School District	Robin Rosswurm
	Elmwood Local School District	Luann Vanek
	Mid-East Career and Technology Center	Richard White
	Otsego Local School District	Deborah Ford
	Talawanda City School District	Mike Davis
	Three Rivers Local School District	Christine Poetter
	Wadsworth City School District	Doug Beeman
State Agency		
	Auditor of State, Office of Professional Standards	Rhonda Kline

Appendix B - Stakeholder Submitted Study Information

List of Submitting Stakeholders

Bradley Payne

Bricker & Eckler LLP

The Buckeye Institute

Dinsmore

Fifth Third Securities

Squire Patton Boggs

Stifel

Bradley Payne

MEMO

To: Sara Freetage and Jon Walden, Ohio Facilities Construction Commission

From: John Payne, Bradley Payne Municipal Advisors

Date: October 14, 2015

RE: **Lease Purchase/COPs/Non-Voted Local Share Study**

Ms. Freetage and Mr. Walden,

I am responding to your questions as presented in your letter of October 8th inviting financial services stakeholders to discuss COPs as a funding source for local share. My responses originate from 30-years of experience working with Ohio schools issuing COPs and other securities to fund facilities, including OFCC facilities. I look forward to your response.

QUESTION 1 – WHAT ARE THE BENEFITS TO SCHOOL DISTRICTS THAT USE LEASE PURCHASE OR COPS PROCEEDS FOR THEIR PORTION OF A LOCAL SHARE AN OFCC PROJECT?

- Districts often find they have extra operating or capital funds due to changes in tax base, tax law, or prudent planning. These funds can be leveraged efficiently for new facilities when used to make annual payments on COPs.
- Local share ballot millage is sometimes too high to garner Board or voter support. COPs often provide proven relief in those situations.
- COPs are a proven and reliable method of financing for Ohio schools. They generally carry only a slightly lower credit rating than voted bonds and investors require a small premium in rate in today's markets in most cases.
- COPs documents are standardized and the extra cost that comes with this type of financing is small in terms of fees as compared to voted bond issues.

QUESTION 2 – WHAT ARE THE RISKS TO SCHOOL DISTRICTS THAT USE LEASE PURCHASE OR COPS?

- Simply put, COPs expose a district to the risk of losing access to funded facilities due to non-appropriation of the money needed to make lease payments. In general, the investor market and the rating agencies consider this risk to be low, and they have a variety of metrics they use to measure that risk.
- Districts also incur "budget risk" for lack of a better term. It is possible for non-voted revenue sources to decline at some point for a variety of reasons. Any decline should be gradual but theoretically could be rapid in rare cases. Assuming a district chooses to pay its COPs first, a material decline in revenues could hurt the delivery of educational services through staff reductions, etc.

Bradley Payne

- The art of judging risk should be considered in this discussion. While the majority of Ohio schools COPs issues are low risk, there can be rare cases where they are not. For this reason, it may be beneficial to implement a well thought out measure of risk prior to COPs funding rejection. The following table illustrates this dynamic, not as a suggested risk assessment tool of course, but to facilitate and illustrate this discussion. You will see reference to "essentiality" in the table. In essence, this measures the fact that some COPs projects are more indispensable than others and therefore more likely to become politically risky.

Local Share Funding Mix and Risk Profile - Hypothetical Rankings

Working Assumption: Voted Bond Shortfalls Covered by COPs Offering

	District A	District A	District C
Voted Bond:			
% of local share	75	25	50
Income Tax:			
% of local share	25	50	25
Continuing tax	yes	yes	yes
Projected Coverage Ratio	2.2	1.5	1.5
Repealable	yes	yes	yes
PI Levy:			
% of local share	0	25	0
Continuing tax	na	yes	na
Repealable	na	yes	na
Operating Levy:			
% of local share	0	0	25
Continuing tax	na	na	na
Repealable	na	na	yes
COPs Maturity:	20	25	30
Essentiality Opinion:			
(10 highest / 1 lowest)	8	6	5
Avg 5-Year Gen Fd Excess Year-End Balance:	20%	30%	10%
RISK PROFILE			
(10 highest / 1 lowest)	1	3	5

Bradley Payne

QUESTION 3 – WHAT ARE THE COSTS (BOTH FIRST COST AND LONG TERM COSTS) FOR A SCHOOL DISTRICT USING A) LEASE PURCHASE ARRANGEMENT OR COPS VERSUS A MORE TYPICAL VOTED BOND ARRANGEMENT?

- There are many conditions that determine issuance costs for both kinds of securities including but not limited to number of maturities, issue size, credit enhancement if any, ratings if any, paying agent services required, and legal, advisory and underwriter fees. So, it's difficult to make an apples to apples comparison, but there are some general understandings as noted below.
- Short-term costs (one-time upfront transaction fees) - COPs generally create higher legal fees and trustee fees due to the increase in documentation and duties and the need sometimes for additional lawyers. Ohio COPS documents are well established and standard for the most part so the cost difference with that should be minor. We do sometimes see the addition of underwriter's counsel which, while not a direct cost to the issuer, may increase the underwriter's fee. Also, in this new age of aggressive regulation and litigation, it may be recommended to add "issuer's counsel" to more complex transactions like COPs. COPs will also pressure municipal advisors and underwriters to ask for higher fees simply due to extra work load and fiduciary exposure. Overall, the cost increase is minor vs. for example the impact of even a small increase in interest rates.
- To illustrate impact -I would suggest that a typical $10 million voted general obligation bond would experience total up-front fees and expenses of 1.5% to 2% of the amount issued while a comparable COPs issue would be in the range of 1.8% to 2.5%. These are not significant differences in my opinion – they have little if any practical effect on payments.
- Long-term costs – the only identifiable long-term cost difference for COPs is higher interest costs. This difference reflects the lower credit profile of COPs, and we often see that difference reflected in COPs ratings being one modifier, rating step, below a district's general obligation rating. In my experience, COPs typically carry higher interest rates versus comparably rated securities of 0.05% to 0.10% per maturity across the scale in today's markets and 0.10% to 0.15% higher rates than the same district's general obligation bond rates. This increases the overall cost of interest over the life of the securities by approximately 2 to 3 percent (e.g, 4.5% vs 4.65% for a sample 20 year issue), again not having much of a practical effect on payments. History shows that if interest rates rise materially in coming years, the COPs difference would grow larger simply due to the natural spreading out of credit spreads as rates move higher. That is something that could be watched.

QUESTION 4 –IF A LEASE PURCHASE OR COPS ARRANGEMENT IS FOUND AN APPROPRIATE FINANCING VEHICLE FOR A LOCAL SHARE, SHOUD THE ORC BE REVISED TO PROVIDE FOR IT SPECIFICALLY?

I defer to bond counsel on this question.

I hope these responses help with the Commission's deliberations. Thank you.

Memorandum

To:	**Timothy Keen, Director, OBM** **David Chovan, Interim Executive Director, OSFC**
From:	**Bricker & Eckler LLP/Rebecca Princehorn**
Date:	**October 21, 2015**
Re:	**Lease-Purchase Study/HB 64, Section 285.80**

We at Bricker believe the lease-purchase approach is permitted under current law for providing the Local Share for co-funded OSFC programs. We have previously shared our analysis in that regard with OSFC. The lease-purchase approach should remain an option for the following reasons.

1. **Avoids a state-mandated voted levy or bond question if unnecessary.**

   Eastwood LSD had sufficient revenue from economic development incentives to pursue a lease-purchase for its OSFC Local Share and Maintenance Obligation without a ballot request. Other clients have realized significant revenue from closing old buildings and consolidating buildings or co-locating buildings on a single campus.

2. **The School District direct debt limitation for unvoted general obligation debt is impractical.**

   The RC 133.06(A) limitation of $1/10^{th}$ of 1% of tax valuation is insufficient debt capacity in most cases.

3. **Even if the unvoted general obligation direct debt limitation were expanded similarly to the filing exceptions of RC 133.06(I), the indirect (ten mill) debt limitation of the Ohio Constitution remains challenging.**

   A current school district client wants to pursue an income tax-backed general obligation bond issue under RC 3318.052(E) for its Local Share. However, a city within the school district has taken the majority of the indirect debt capacity, leaving only 1.9 mills available for overlapping subdivisions—first come, first served.

4. **Holding a remedy in abeyance for failure to appropriate during the OSFC construction period does not significantly affect ratings, marketability or interest rates.**

   Both Eastwood LSD and Northwood LSD were able to market their lease-purchase financings successfully under that structure.

Greg R. Lawson
Statehouse Liaison and Policy Analyst
614-224-4422
greg@buckeyeinstitute.org

Responses to OFCC Questions

1) **Benefits to School Districts-** Quicker starts for construction. Potentially locking in more favorable financing depending on debt limit in a district.

2) **Risks to School Districts-** Less stability than under typical bonding. "Cash on hand" can fluctuate more. Though not technically debt, this allows voters to be circumvented and have more money spent on construction than would be approved under normal capital bonding drives and represents a lack of transparency.

3) If the study finds using lease-purchase or COP arrangements as appropriate financing vehicles, the Ohio Revised Code **should be amended to clarify this intent.**

Dinsmore

OHIO FACILITIES CONSTRUCTION COMMISSION (OFCC)
Lease Purchase/COPs/Non-Voted Local Share Study

Benefits of lease / COPs financings:

1. Keep additional taxes at minimum

   - When a district has other funds/revenues available, why go on the ballot for more new taxes than needed? A district with a PI levy/fund or general fund surplus can use such monies to make rental payments on a lease/COPs financing. If a district's local share of a project is $10,000,000 and current revenues could support the issuance of $2,500,000 in lease/COPs financing, then the District only needs to go on the ballot for an additional tax levy to support a $7,500,000 voted bond issue.

2. Complete an OFCC project when there are cost overruns:

   - Lease/COPs financings have been used in conjunction with OFCC projects to "fill gaps" to a large extent. In other words, such financing structures are often used when there are cost overruns or, in some cases, when construction costs unexpectedly rise. Without the ability to utilize a lease/COPS financing structure in these circumstances, districts may be at greater risk for non-completion of construction projects.

     Without having a lease/COPs financing structure as an option, districts will likely need to over-estimate costs, which will not keep potential costs down, and likely the process of estimating costs will be a heightened political battle, and in some cases result in excess taxes.

Risks of lease/COPs financing

In the event of a default, the Trustee in a COPs structure or the banking institution in a lease structure has the authority, pursuant to the terms of the financing documents, to enter, occupy and relet the leased facility as needed to recoup payments owed. We've been able to structure lease/COPs with default remedies in abeyance during the period of OFCC's involvement.

Realistically, no credit provider wants to occupy a school building and at the same time no school district would willingly default since the ramifications would be the temporary loss of use of a school building that is essential to the functioning of such school district.

Costs

There is typically a slightly higher interest rate on a lease or COPs. If the COPs or lease is rated, typically the COPs or lease is rated one or two-notches lower than the same issuer's general obligation rating. However, these costs are well known when a district evaluates the affordability of a project. Further, these costs are usually outweighed by the benefits of no new taxes.

Memorandum

FIFTH THIRD SECURITIES

To: Sara Freetage, Business Manager
Jon C. Walden, Chief Legal Counsel
Ohio Facilities Construction Commission

From: Public Finance, Fifth Third Securities, Inc.

Date: November 6, 2015

Subject: Funding of OFCC Project
Lease Purchase/COPs/Non-Voted Local Share Study

On behalf of Fifth Third Securities, we appreciate the opportunity to provide the following information concerning the use of Certificates of Participation (COPs) for the locally funded share of OFCC projects. We have responded to each of the outlined questions included in the letter dated October 8, 2015. We hope this information is useful in the study being conducted by the OFCC and OBM in evaluating the impacts, benefits and risks associated with a school district financing the local share of a project with proceeds derived from a lease-purchase/COPs arrangement.

Also, included as an addendum to this memo is a case study of the $99,255,000 Clermont County Port Authority Lease Revenue Bonds (West Clermont Local School District Project) transaction underwritten by Fifth Third Securities and dated October 1, 2015. There is a specific discussion of the costs associated with the conduit financing and any long-term, residual costs. This has been included because the transaction was a point of discussion at the meeting held on October 21st, and additional information was requested.

Should there be any additional information that we can provide to assist in completing the study, please contact the Fifth Third Securities Public Finance Managing Director, John Adams, at (614) 744-5450 or via e-mail at john.adams@53.com.

1. What are the benefits to School Districts that use lease-purchase or COPs proceeds for their portion of a local share of an OFCC project?

First and foremost, the availability of financing the local share of an OFCC project via COPs gives school districts additional flexibility for their financing than is available in the current environment. If there is a revenue stream that is not being utilized in another capacity, a district could channel those funds to fit the needs of the district – specifically for a new building. COPs have a long-standing history of being utilized for school finance, for both OFCC projects and stand-alone projects. COPs are simply an additional tool that districts could continue to use when analyzing the appropriate structure for the local share of an OFCC project. For instance, COPs could be utilized to help lower the amount of millage requested from voters to complete

the project by completing a partial financing with voted General Obligation (GO) bonds and a partial COPs financing. Or, as another example of the use of COPs for OFCC projects, COPs could be issued for any additional debt outside of a voted amount should the project increase in size after voter approval. The district can fund an additional amount without going back to the voters for a project that has already been approved for a specified amount.

The use of COPs also allows a school district to enter the market more quickly than if a vote was required by the electorate for a GO bond issue. Should a revenue stream be available and a district need to meet a deadline for the local share of financing for OFCC funding, the availability of COPs as a financing tool gives the district the flexibility to meet that deadline.

2. What are the risks to School Districts that use lease-purchase or COPs proceeds for their portion of a local share of an OFCC project?

The largest risk in the use of COPs for any financing, whether for an OFCC project or a stand-alone project, is that of annual appropriations. There is always the possibility that the school board, or a future board, will not appropriate the funds to make the annual lease payment. For OFCC projects this risk is somewhat mitigated by the fact that a school building is an essential asset to the function of the District. The essence of the essentiality of the project is what allows COPs to be so readily accepted by investors in today's market.

There is also a political risk involved when COPs are issued. The perception of the constituents could be negative when they learn of the remedies available to the Lessor should there be a default in debt service payments. The remedies are laid out in the trust agreement for a COPs transaction – ultimately allowing lease holders to appropriate the space until the payments are made. However, it is imperative to point out that this is not the intention of a school district entering into a COPs financing – issuers do not issue debt with the intention of defaulting.

3. What are the costs (both first cost and long term costs) for a School District using (a) lease-purchase arrangement or (b) COPs versus a more typical voted bond arrangement?

COPs have slightly higher issuance costs than a traditional GO issue. There are additional legal documents that must be prepared and a smaller pool of investors, which causes the costs of marketing the issue to be slightly higher.

Due to the underlying security, a COPs transaction is typically rated one notch lower than the GO rating of an issuer. This being said, there will be slightly higher interest rates associated with the COPs transaction. For example, in today's market a $30 million, 30 year COPs transaction rated in the Aa3 category would cost $985,712.50 more in interest than would a GO transaction rated in the Aa2 category, all other assumptions held constant. This is an average of $32,857.08 in interest cost annually. The additional interest on the COPs transaction equates to only a 1.7% increase in the total annual principal and interest payment when the debt service is set-up as level debt service, or approximate equal annual payments.

Please see the following chart which demonstrates the spread on interest rates between a COPs transaction rated in the Aa3 category and a GO transaction rated in the Aa2 category. The all-in-cost differential is 23 basis points over the thirty year amortization period. This spread is smaller in the early years of the transaction and increases in the later years. This is to be expected as there is more repayment risk associated with the long end of transaction than the earlier maturities.

Fees associated with a COPs transaction are paid in the same manner as a GO transaction. All fees can be paid as up-front onetime costs with no ongoing annual expenses associated with the transaction.

	COPs		GO		
	Rating:	Aa3	Rating:	Aa2	
Maturity	Coupon	Yield	Coupon	Yield	Spread
12/1/2016	3.00%	0.62%	3.00%	0.47%	0.15%
12/1/2017	3.00%	0.93%	3.00%	0.78%	0.15%
12/1/2018	3.00%	1.19%	3.00%	1.04%	0.15%
12/1/2019	3.00%	1.43%	3.00%	1.26%	0.17%
12/1/2020	3.00%	1.73%	3.00%	1.53%	0.20%
12/1/2021	4.00%	1.97%	4.00%	1.77%	0.20%
12/1/2022	4.00%	2.19%	4.00%	1.99%	0.20%
12/1/2023	4.00%	2.41%	4.00%	2.21%	0.20%
12/1/2024	4.00%	2.57%	4.00%	2.37%	0.20%
12/1/2025	4.00%	2.70%	4.00%	2.50%	0.20%
12/1/2026	5.00%	2.85%	5.00%	2.62%	0.23%
12/1/2027	5.00%	2.98%	5.00%	2.73%	0.25%
12/1/2028	5.00%	3.08%	5.00%	2.83%	0.25%
12/1/2029	5.00%	3.16%	5.00%	2.91%	0.25%
12/1/2030	5.00%	3.25%	5.00%	3.00%	0.25%
12/1/2031	5.00%	3.32%	5.00%	3.07%	0.25%
12/1/2032	5.00%	3.38%	5.00%	3.13%	0.25%
12/1/2033	5.00%	3.43%	5.00%	3.18%	0.25%
12/1/2034	5.00%	3.48%	5.00%	3.23%	0.25%
12/1/2035	5.00%	3.53%	5.00%	3.28%	0.25%
12/1/2040	4.00%	4.10%	3.75%	3.85%	0.25%
12/1/2045	4.00%	4.17%	3.75%	3.92%	0.25%

4. If a lease-purchase or COPs arrangement is found an appropriate financing vehicle for a local share, should the ORC be revised to provide for it specifically?

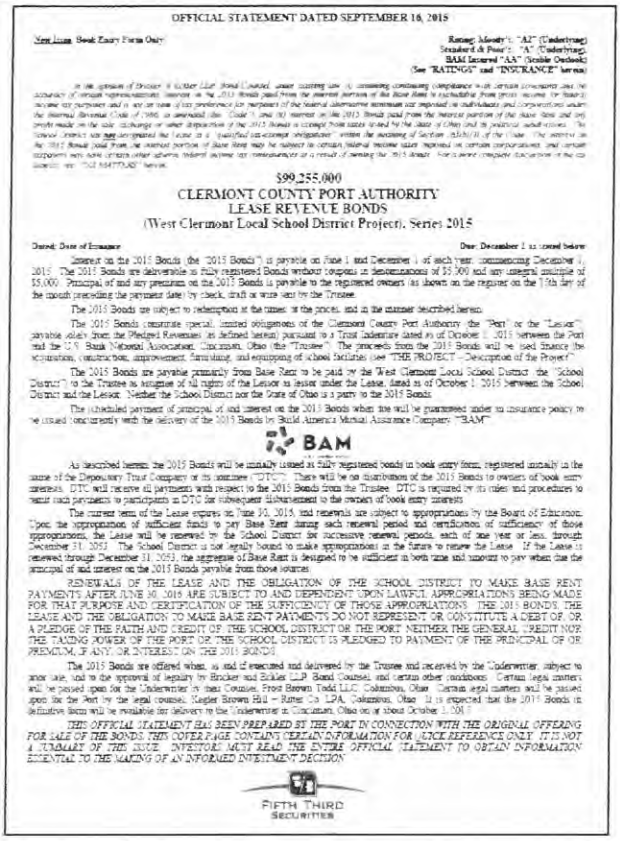
Yes, Fifth Third Securities would support the revision of ORC section 3318.084 to specifically accommodate the use of COPs for the local share of an OFCC project financing. This would make clear the results of the current study to all future members of both the OFCC and the OBM. While a change to the ORC would be cumbersome, it would ensure COPs/lease-purchase financings to be an appropriate funding mechanism for all future projects completed with the OFCC.

Addendum

CLERMONT COUNTY PORT AUTHORITY, OHIO
$99,255,000 Lease Revenue Bonds
(West Clermont Local School District Project, Series 2015

The project consolidated two existing high schools into one facility. The District has 4.2 mills of inside millage dedicated to the Permanent Improvement fund. This generates over $5.6mm per year and will be slated to repay the debt service on the bonds. In addition to the PI monies, the district entered into several Tax Increment Financing Districts (TIF) that will generate over $2.4 mm in revenue per year at full build out.

The utilization of the port authority was for the sole purpose of utilizing the Ports powers to extend the debt service an additional 8 years in amortization. With Port issuance costs, this freed up around $400-$500k per year in cash flow for the District. After several negotiations with the Clermont County Port Authority, a final upfront fee of $148,882 and an average annual fee over the 38 years of $17,778 were agreed upon.



OFFICIAL STATEMENT DATED SEPTEMBER 16, 2015

New Issue: Book Entry Form Only

Rating: Moody's: "A2" (Underlying)
Standard & Poor's: "A" (Underlying)
BAM Insured "AA" (Stable Outlook)
(See "RATINGS" and "INSURANCE" herein)

In the opinion of Bricker & Eckler LLP, Bond Counsel, under existing law, (i) assuming continuing compliance with certain covenants and the accuracy of certain representations, interest on the 2015 Bonds paid from the interest portion of the Base Rent is excludible from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the 2015 Bonds paid from the interest portion of the Base Rent and any profit made on the sale, exchange or other disposition of the 2015 Bonds is exempt from taxes levied by the State of Ohio and its political subdivisions. The School District has designated the Lease as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. The interest on the 2015 Bonds paid from the interest portion of Base Rent may be subject to certain federal income taxes imposed on certain corporations and certain recipients who have certain other adverse federal income tax consequences as a result of owning the 2015 Bonds. See herein for a more complete description of the tax aspects. See "TAX MATTERS" herein.

$99,255,000
CLERMONT COUNTY PORT AUTHORITY
LEASE REVENUE BONDS
(West Clermont Local School District Project), Series 2015

Dated: Date of Issuance — Due: December 1 as stated below

Interest on the 2015 Bonds (the "2015 Bonds") is payable on June 1 and December 1 of each year, commencing December 1, 2015. The 2015 Bonds are deliverable as fully registered Bonds without coupons in denominations of $5,000 and any integral multiple of $5,000. Principal of and any premium on the 2015 Bonds is payable to the registered owners (as shown on the register on the 15th day of the month preceding the payment date) by check, draft or wire sent by the Trustee.

The 2015 Bonds are subject to redemption at the times, at the prices, and in the manner described herein.

The 2015 Bonds constitute special, limited obligations of the Clermont County Port Authority (the "Port" or the "Lessor") payable solely from the Pledged Revenues (as defined herein) pursuant to a Trust Indenture dated as of October 1, 2015 between the Port and the U.S. Bank National Association, Cincinnati, Ohio (the "Trustee"). The proceeds from the 2015 Bonds will be used finance the acquisition, construction, improvement, furnishing, and equipping of school facilities (see "THE PROJECT – Description of the Project").

The 2015 Bonds are payable primarily from Base Rent to be paid by the West Clermont Local School District (the "School District") to the Trustee as assignee of all rights of the Lessor as lessor under the Lease, dated as of October 1, 2015 between the School District and the Lessor. Neither the School District nor the State of Ohio is a party to the 2015 Bonds.

The scheduled payment of principal of and interest on the 2015 Bonds when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the 2015 Bonds by Build America Mutual Assurance Company ("BAM".

BAM

As described herein, the 2015 Bonds will be initially issued as fully registered bonds in book entry form, registered initially in the name of The Depository Trust Company or its nominee ("DTC"). There will be no distribution of the 2015 Bonds to owners of book entry interests. DTC will receive all payments with respect to the 2015 Bonds from the Trustee. DTC is required (or its rules and procedures to remit such payments to participants in DTC for subsequent disbursement to the owners of book entry interests.

The current term of the Lease expires on June 30, 2015, and renewals are subject to appropriations by the Board of Education. Upon the appropriation of sufficient funds to pay Base Rent during each renewal period and certification of sufficiency of those appropriations, the Lease will be renewed by the School District for successive renewal periods, each of one year or less, through December 31, 2053. The School District is not legally bound to make appropriations in the future to renew the Lease. If the Lease is renewed through December 31, 2053, the aggregate of Base Rent is designed to be sufficient in both time and manner to pay when due the principal of and interest on the 2015 Bonds payable from those sources.

RENEWALS OF THE LEASE AND THE OBLIGATION OF THE SCHOOL DISTRICT TO MAKE BASE RENT PAYMENTS AFTER JUNE 30, 2016 ARE SUBJECT TO AND DEPENDENT UPON LAWFUL APPROPRIATIONS BEING MADE FOR THAT PURPOSE AND CERTIFICATION OF THE SUFFICIENCY OF THOSE APPROPRIATIONS. THE 2015 BONDS, THE LEASE AND THE OBLIGATION TO MAKE BASE RENT PAYMENTS DO NOT REPRESENT OR CONSTITUTE A DEBT OF, OR A PLEDGE OF THE FAITH AND CREDIT OF, THE SCHOOL DISTRICT OR THE PORT. NEITHER THE GENERAL CREDIT NOR THE TAXING POWER OF THE PORT OR THE SCHOOL DISTRICT IS PLEDGED TO PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THE 2015 BONDS.

The 2015 Bonds are offered when, as and if executed and delivered by the Trustee and received by the Underwriter, subject to prior sale, and to the approval of legality by Bricker and Eckler LLP, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Underwriter by their Counsel, Frost Brown Todd LLC, Columbus, Ohio. Certain legal matters will be passed upon for the Port by the legal counsel, Kegler Brown Hill + Ritter Co. LPA, Columbus, Ohio. It is expected that the 2015 Bonds in definitive form will be available for delivery to the Underwriter in Cincinnati, Ohio on or about October 1, 2015.

THIS OFFICIAL STATEMENT HAS BEEN PREPARED BY THE PORT IN CONNECTION WITH THE ORIGINAL OFFERING FOR SALE OF THE BONDS. THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

FIFTH THIRD SECURITIES

SQUIRE PATTON BOGGS

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Squirepattonboggs.com

October 20, 2015

VIA E-MAIL

Sara Freetage, CPM
Business Manager
Ohio Facilities Construction Commission
30 West Spring Street, 4th Floor
Columbus, OH 43215

Re: Funding of OSFC Projects
Lease-Purchase/COPs/Non-Voted Local Share Study

Dear Ms. Freetage:

We write in response to your letter of October 8 inviting submission of responses to a series of questions pertaining to a study being conducted by the Ohio School Facilities Commission (OSFC), in consultation with the Office of Budget and Management, of the impacts, benefits and risks associated with a school district funding its share of the basic project cost of a classroom facilities project under RC 3318 with cash-on-hand resulting from a lease-purchase agreement or Certificates of Participation (COPs) financing under RC 3313.375 that is not subject to voter approval. Our responses are below, organized consistently with the presentation of the related questions in your October 8 letter.

1. **What are the benefits to school districts that use lease-purchase or COPs proceeds for their portion of a local share of an OSFC project?**

   - As a general rule, having more options is better than having fewer options. For a given classroom facilities project, the best financing option depends on the school district's facts and circumstances, which will be unique to that school district.

   - A school district may be able to structure its finances such that moneys are available to finance all or a portion of the local share of its classroom facilities improvements and thereby reduce or eliminate the need for additional taxes to pay debt charges on voted securities. In such an instance, lease-purchase financing (of which COPs are a variation) permits a board of education to exercise the discretion to undertake the project using existing resources or resources that will become available upon completion of the project, e.g. through reduced operating and maintenance expenses, without approaching its voters or doing so for approval of a smaller bond issue. See, e.g., RC 3318.052. Note that under existing law school districts have virtually no

unvoted debt issuing authority for classroom facilities – the applicable debt limit is 0.1% of tax valuation.

- Use of lease-purchase financing may be critical to completion of an OSFC project where the ultimate local share of the cost of the project exceeds amounts previously raised through a voted bond issue or otherwise and a delay in seeking or receiving additional voter approval would compromise the project. (This benefit is recognized by Section 285.80 of Am. Sub. H.B. 64, mandating the local share study.)

2. **What are the risks to school districts that use lease-purchase or COPs proceeds for their portion of a local share of an OSFC project?**

- A lease-purchase financing brings with it the risk that, in the event a future board of education determines not to appropriate funds to pay the "rent" due under the lease-purchase agreement, the school district will lose the use of the leased classroom facilities for the duration of the related ground lease (the term of which is typically the maximum term of the related lease-purchase agreement plus five years (see RC 3313.375)).

  We are unaware of any Ohio board of education making such a determination in the context of the lease-purchase of classroom facilities since enactment of RC 3313.375 in 1995 first authorizing such transactions; thus, this risk may be more theoretical than practical. In fact, we are unaware of any instance of an Ohio board of education making such a determination related to any lease-purchase agreement subject to annual appropriation of funds for acquisition of real estate. This is likely due to the fact that payments on lease-purchase financings are programmed to be paid from either (i) a source legally dedicated to school district capital improvements (such as a voter-approved permanent improvement levy) or (ii) the school district's general fund, in which case those payments are reflected in the school district's five-year forecast that is then updated and extended each fiscal year.

- A board of education that opts to use lease-purchase financing after it tries, but fails, to obtain voter approval for bonds to finance a project may be seen as executing an "end run" around the will of the voters, potentially creating antagonism and an environment that will make it more difficult to obtain approval of other needed voted measures.

  In situations such as described above, however, it is often difficult in hindsight to sort out causes and effects, i.e. were voters rejecting the issuance of bonds (and related voted tax) or the project itself? Is declining voter support due to the "end run" or other unrelated matters? Further, the playing out of these facts could also be simply characterized as the political process at work.

It should also be noted that the anticipated use of lease-purchase or COPs financing to fund a portion of the basic project cost of an OSFC project has in some instances been fully disclosed by the school district during a voted bond issue campaign.

- A lease-purchase or COPs financing of classroom facilities improvements will be secured by a leasehold interest in real property, and the financing documents will contain covenants that limit the school district's flexibility to sell, lease, demolish or replace that property during the lease term (which may be up to 30 years). This is not the case with voted bonds, which are not secured by any property interest.

3. **What are the costs (both first costs and long-term costs) for a school district using (i) lease-purchase arrangements, (ii) COPs or (iii) other sources such as bonds sold through a port authority versus a more typical voted bond arrangement?**

- As bond counsel, we must stress that our expertise is legal rather than financial and our comments in this area are strictly observations based on our participation in thousands of school district financing transactions.

- In our experience, financing of classroom facilities using lease-purchase arrangements, including COPs, generally results in higher costs of issuance and interest costs when compared to those for voted bond issues.

- We have not observed the financing of classroom facilities through the issuance of bonds sold by a port authority, but expect that not only would there be higher costs of issuance and interest costs on such financings when compared to voted bond issues, there would also be payment of on-going transactional fees including fees of the related port authority, bond trustee, etc., not present with voted bond issues.

4. **If a lease-purchase or COPs arrangement is found to be an appropriate financing vehicle for a school district's local share, should the Revised Code be revised to provide for it specifically?**

- As bond counsel, we are firmly of the view that the proper interpretation of existing law is that the use of the proceeds of lease-purchase or COPs financings as a "local donated contribution" to a local share requirement is authorized, and we are comfortable rendering legal opinions, consistent with the bond counsel standard for doing so, on appropriately structured and documented lease-purchase and COPs financings for that purpose. As such, we do not believe that statutory amendments are a strict necessity.

- Were there to be statutory amendments to provide more specifically for the authority to finance all or a portion of a school district's local share of an OFSC project, we would strongly encourage inclusion of language in an uncodified section of any such bill or elsewhere making it clear that those amendments were intended to illuminate

and support, and not contradict or expand, preexisting legal authority. We would be glad to assist in the preparation of or provide comments on any such statutory amendments and related language described above.

Our partner Ryan Callender will attend the meeting with bond counsel representatives you are holding on October 21. Ryan can address any questions you may have at that time, or we would be glad discuss, on an individual basis or collectively, our submission or any additional questions you may have.

Respectfully submitted,

Squire Patton Boggs (US) LLP

SQUIRE PATTON BOGGS (US) LLP

Copy: Jon Walden, Esq., Chief Legal Counsel (via e-mail)

October 21, 2015

Sara Freetage, CPM
Business Manager
Ohio Facilities Construction Commission
30 West Spring Street, 4th Street
Columbus. OH 43215

Dear Ms. Freetage:

In response to your October 8 letter soliciting information from financial firms regarding the OFCC's Lease Purchase/COPs/Non-Voted Local Share Study, Stifel, Nicolaus & Company, Incorporated submits the following answers to the OFCC's questions.

Question 1: What are the benefits to the School District's that use lease-purchase or COPs proceeds for their portion of a local share of an OSFC project?

Answer: In a word, the benefit to allow a School District to use Certificates of Participation is flexibility. Many of the District's that have used COPs for all or a portion of their local share have done so because they have extra funds either in their permanent improvement or operating accounts. The excess can come from any number of sources including projected reduction in operating costs for a new facility, increase in tax base due to abatements rolling off, prudent planning or law changes. With more and more frequency District are looking for alternative solutions to get their local share and COPs is often at the top of the list.

Question 2: What are the risks to School Districts that use lease-purchase or COPs proceeds for their portion of a local share of an OSFC project?

Answer: The COPs structure is a well-worn path for Ohio issuers, with many issuers other than School Districts, including the State of Ohio, utilizing the flexibility COPs provides. However, the risk of non-appropriation, or a Board of Education deciding not to make a payment is the major risk. Non-appropriation may occur for a number of reasons including:

1. Decline in the revenue used to make payments on the COPs.
2. The building being leased is no longer needed.
3. Political changes to the District.

Question 3: What are the costs (both first cost and long-term costs) for a School District using (a) lease-purchase arrangement or (b) COPs versus a more typical voted bond arrangement?

Answer: The main cost to a District comes in the

- Interest Rate Cost: Investors in municipal bonds are also comfortable with the COPs structure, but due to the annual appropriation nature of the COPs financing require a slightly higher interest rate when compared to a general obligation. The

interest rate scales below were developed by Stifel's trading desk and show the estimated interest rate spread between a COPs and general obligation issue for a School District, assuming a GO rating of Aa3 and a COPs rating of A1.

SAMPLE Interest Rate Comparison for COPs and GO

	Aa3 GO Interest Rates		A1 COPs Interest Rates		Yield
Maturity	Coupon	Yield	Coupon	Yield	Differential
2016	4.00	0.63	4.00	0.78	0.15
2017	4.00	0.98	4.00	1.13	0.15
2018	4.00	1.21	4.00	1.36	0.15
2019	4.00	1.44	4.00	1.61	0.17
2020	4.00	1.70	4.00	1.95	0.25
2021	4.00	1.92	4.00	2.17	0.25
2022	4.00	2.14	4.00	2.39	0.25
2023	4.00	2.37	4.00	2.62	0.25
2024	4.00	2.57	4.00	2.82	0.25
2025	4.00	2.78	4.00	3.03	0.25
2026	4.00	3.00	3.00	3.25	0.25
2027	4.00	3.16	4.00	3.41	0.25
2028	4.00	3.26	4.00	3.51	0.25
2029	4.00	3.35	3.50	3.60	0.25
2030	4.00	3.44	4.00	3.69	0.25
2031	4.00	3.51	4.00	3.76	0.25
2032	4.00	3.57	4.00	3.82	0.25
2033	3.50	3.62	3.75	3.87	0.25
2034	4.00	3.67	4.00	3.92	0.25
2035	4.00	3.72	4.00	3.97	0.25
2040	3.75	3.91	4.00	4.11	0.20
2045	4.00	3.98	4.00	4.18	0.20

In the aggregate, the all-in interest rate for the GO scale above is 3.64% and the all-in interest rate for the COPs scale is 3.86%. The interest differential is only 0.22% or $178,950 in increased cost on a $20,000,000 issue.

I am interpreting short-term costs on a COPs transaction to be issuance costs. These costs may be slightly higher due to higher selling commissions needed for underwriter firms to sell COPs, but only incrementally increased.

Question 4: If a lease-purchase or COPs arrangement is found and appropriate financing vehicle for local share, should the ORC be revised to provide for in specifically?

Answer: No. The universe of investors is comfortable with the legal security already provided in the Ohio Revised Code.

We believe that the OFCC should move swiftly to reopen the window for School Districts to issue COPs for OFCC local share. Many Districts do not need to ask voters for a tax increase to get their local share and in many cases COPs provides a benefit to the taxpayers by not requiring a tax increase/ Thank you for the opportunity to participate in this study and respond to the OFCC's inquiry.

Sincerely,

Patrick T. King

Patrick King
Managing Director

Appendix C - School District Alternative Financing Questionnaire

1. How did your district become aware of alternative financing options in lieu of a voted bond option?
   - ☐ Another School District
   - ☐ Bond Counsel
   - ☐ Financial Advisor
   - ☐ Other _____

2. Why are you interested in pursuing an alternative financing option?
   - ☐ Ten Mill Limit
   - ☐ Total Debt Limit
   - ☐ Securitize Future Cash Flow
   - ☐ Voters Rejected Levy
   - ☐ Other _____

3. What are you planning on funding?
   - ☐ LFI
   - ☐ Local Share
   - ☐ Portion of your Local Share
   - ☐ Refinance
   - ☐ ELPP
   - ☐ Other _____

4. What is the useful life of the asset?
   - ☐ 10 Years
   - ☐ 20 Years
   - ☐ 30 Years
   - ☐ Other _____

5. What will be pledged as security?

6. Will the financing be:
   - ☐ private placement
   - ☐ public offering

7. Will you have ratings agencies grade the issue?

8. Have you explored other financing methods?
   - ☐ Voted Debt
   - ☐ Other _____

9. Compared to a typical bond issue, is the alternative financing:
   - ☐ Faster
   - ☐ Slower
   - ☐ More Expensive
   - ☐ Less Expensive
   - ☐ More Flexible
   - ☐ Less Flexible

10. What is the anticipated source of repayment?
    - ☐ General Fund
    - ☐ PI Levy
    - ☐ Developer Fees
    - ☐ Tax Increment Revenues
    - ☐ Special Taxes
    - ☐ Other _____

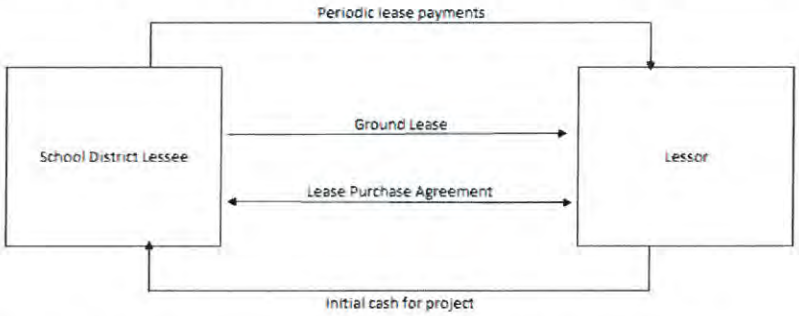
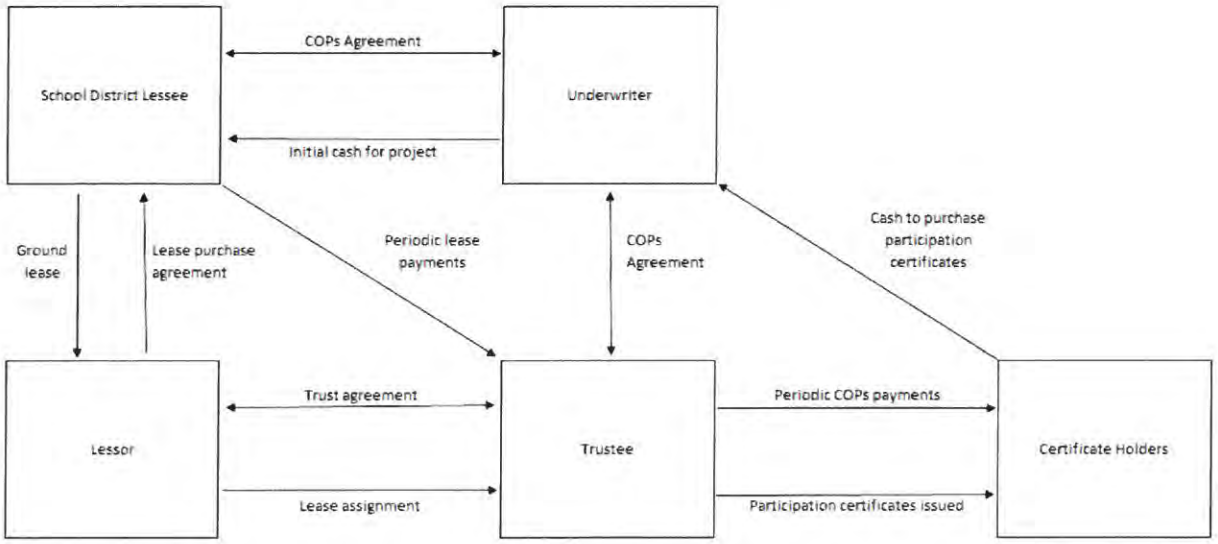
Appendix D - Lease-purchase Agreements

Lease-purchase agreements discussed in this report represent a financing structure that allows a school district to use and eventually own a leased property through what is effectively an installment loan arrangement. The school district makes periodic lease payments that consist of an interest component and a principal component. At the end of the lease, fee ownership of the leased premises transfers to the school district.

The periodic lease payments must be subject to annual appropriation. The term must be a series of one-year renewable terms up to a maximum of 30 years.

The school district may grant a ground lease as security to the lessor for a maximum term equal to the lease-purchase agreement plus five years.

The legal agreements and flow of funds for a lease-purchase agreement are as follows.



For larger and longer-term lease-purchase financing, the lease may be marketed and syndicated to multiple investors in the form of Certificates of Participation (COPs). The legal agreements and flow of funds for a COPs agreement are as follows.