



Province of Alberta

EDUCATION ACT

BORROWING REGULATION

Alberta Regulation 83/2019

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Extract

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ALBERTA REGULATION 83/2019

Education Act

BORROWING REGULATION

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Capital borrowing

1(1) A board may borrow to meet capital expenditures only in accordance with the Act and this Regulation.

(2) The amount of a borrowing to which this Regulation applies

- (a) may be secured by a charge on money receivable by the board under Part 6 of the Act, and
- (b) may not be secured by a charge on a grant payable from the General Revenue Fund under the *Government Organization Act*.

Borrowing for the construction or purchase of school building

2 A board may not borrow money for the construction or purchase of a school building.

Borrowing to refit school building for energy conservation purposes

3 A board may borrow, by issuing a debenture or otherwise, to meet capital expenditures to refit a school building for energy conservation purposes if the following conditions are met:

- (a) the cost of refitting is guaranteed by the supplier in writing to be recoverable by the board from savings in energy costs in not more than 20 years;
- (b) in the opinion of the Minister, all indebtedness under the loan is required to be retired within 20 years;
- (c) the board provides the Minister with
 - (i) a statement by the board of the final cost of the refitting and any other information the Minister requires, and
 - (ii) a copy of the guarantee referred to in clause (a);
- (d) the Minister approves all or part of the loan.

Short-term borrowing

4(1) In this section, “borrowing room”, in respect of a board, means the lesser of

- (a) 3% of Alberta Education operating revenues, and
- (b) the board’s accumulated surplus less 1% of the board’s total expenses,

less the board’s unsupported debt.

(2) Subject to subsection (3), a board may borrow, other than by issuing a debenture, to meet capital expenditures for assets that are not school buildings, or for expenditures that qualify under the Infrastructure Maintenance and Renewal Program, if the following conditions are met:

- (a) the loan does not result in the board exceeding its borrowing room;
- (b) all indebtedness under the loan is required to be retired within the lesser of the life expectancy of the asset for which the money is borrowed and 10 years.

(3) If a loan referred to in subsection (2) would result in the board exceeding its borrowing room, the board may incur the loan only if the Minister approves the loan.

(4) A board that applies to the Minister for approval of a loan to which subsection (3) applies must give the Minister a statement by the board of the final cost of the asset to which the loan applies and any other information the Minister requires.

(5) The Minister may approve all or part of a loan to which subsection (3) applies.

Debenture borrowing

5(1) A board may borrow, by issuing a debenture, for the purpose of

- (a) securing, purchasing, adding to, extending or improving a site for a building other than a school building,
- (b) erecting, purchasing, relocating, renovating, adding to, extending, making structural changes in, furnishing or equipping a building other than a school building,
- (c) providing maintenance or utility services to a building other than a school building, or
- (d) refitting a school building for energy conservation purposes if the conditions set out under section 3 are met.

(2) If the board decides to borrow by debenture for any of the purposes mentioned in subsection (1), it must pass, in a form approved by the Minister, a bylaw stating its intention.

(3) Within 30 days from the date of the passing of the bylaw, the board must give public notice in accordance with section 249 of the Act of its intention to apply to the Minister for authority to borrow the amount specified in the bylaw on the conditions set out in the bylaw.

Petition for vote

6(1) If public notice is given under section 5, the electors of the board may petition the board in accordance with the regulations made under section 250 of the Act.

(2) If a board

- (a) receives a petition meeting the requirements of the regulations made under section 250 of the Act within 15 days from the date of the last publication in a newspaper of the public notice of the proposed debenture borrowing, and
- (b) decides to proceed with the bylaw,

the board must submit the question to a vote of the electors.

(3) The board must

- (a) send a copy of each request contained in the petition to the Minister within 5 days from the date on which the petition is received by the board, and
- (b) advise the Minister in writing within 14 days from the date of the vote of the outcome of each vote conducted under subsection (2).

(4) If the result of the vote is to defeat the proposal for debenture borrowing, the board is bound by the vote for a period of 12 months from the date of the vote and during that 12-month period the board may not propose debenture borrowing for the same or a similar project.

Authority for borrowing

7(1) The Minister may,

- (a) on receipt of the documents and information the Minister requires, and
- (b) on being satisfied that the conditions prescribed by this Regulation have been complied with,

approve the borrowing of any amount mentioned in the bylaw under section 5, or any lesser amount.

(2) The Minister must, as soon as possible after giving an approval under subsection (1), cause notice of the approval to be published in The Alberta Gazette.

Issuing of debentures

8(1) On receiving the Minister's approval under section 7, if a board is required to do so, the board must issue a debenture to secure the amount of the principal and interest on the loan, or any lesser amount, on the terms specified in the bylaw.

(2) A debenture may not be issued after the expiration of 3 years from the date on which the notice of approval of the loan appears in The Alberta Gazette.

(3) A debenture must

- (a) be in a form approved by the Minister,
- (b) be sealed with the seal of the board, and

- (c) be signed
 - (i) either by the chair or by a person authorized to sign for the chair, and
 - (ii) by the treasurer or secretary-treasurer of the board.

(4) Debentures may be issued either all at one time or in instalments at any times the board considers expedient and may be dated accordingly.

Void borrowing

9(1) If, before the Minister approves any borrowing required, a board enters into an agreement the consideration for which is to be raised by debenture,

- (a) the agreement is void, and
- (b) any money paid under the agreement must be repaid to the board.

(2) Any agreement entered into by the board for the sale, transfer, pledge or other charge of a debenture or any interest in the debenture before the Minister has approved the borrowing represented by the debenture is void.

(3) A board may not proceed with a project referred to in section 5(1) before the Minister approves any borrowing required to meet the capital expenditures.

(4) This section does not apply to any expenditure for the services of an architect engaged to make preliminary plans or to obtain and compile information necessary in the opinion of the board to enable it to make an application to the Minister.

Repeal

10 The *Capital Borrowing Regulation* (AR 188/98) is repealed.

Expiry

11 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on August 31, 2029.

Coming into force

12 This Regulation comes into force on September 1, 2019.



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