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Mechanics of the 110% Adequacy Referendum

Included within the 550-page education funding bill

approved by the General Assembly and signed by Governor Rauner on August 31, 2017, Public Act 100-0465, is a three-page provision granting voters the ability to seek a reduction of the educational fund levy of a school district by up to ten percent if a school district has more than 110 percent of the funds necessary to meet its adequacy funding target. To seek such a reduction, ten percent of the registered voters in the school district must sign a petition to place the question on the ballot and the resulting reduction cannot allow funds to dip below the 110 percent of adequacy target.

This article will examine how this provision, the “adequacy referendum,” is likely to work in practice, the application of relevant election law principles to the adequacy referendum, what a school district can and cannot do if faced with such a referendum question and the tax extension consequences of a successful referendum.

The Mechanics of the Law

The adequacy referendum is embedded within the Illinois Property Tax Code at the new Section 18-206 of the Property Tax Extension Limitation Law (PTELL), entitled “Decrease in extension for educational purposes.” While the adequacy referendum is part of the PTELL it applies to all school districts whether or not the district is subject to PTELL.

The adequacy referendum is initiated by a voter petition containing signatures of not less than ten percent of the registered voters in the school district. The adequacy referendum can only be held at a consolidated election (meaning during an odd-numbered year when school board members stand for election). Once submitted to the voters of a school district, an adequacy referendum cannot be submitted again for the next two consolidated elections. So, if an adequacy referendum is on the ballot at the March 2019 consolidated election, whether it passes or not, the question cannot reappear until the 2025 consolidated election.

Gathering Signatures

The signature gathering time frame for the new adequacy referendum departs from what most school districts are familiar with via the backdoor referendum process. With a backdoor referendum, voters have 30 days to gather signatures from ten percent of the registered voters to force an issue on to the ballot. This is most often used when a school board expresses its intent by resolution

to issue working cash fund bonds. Within 30 days of the publication of the school district’s intent to issue the bonds, voters must gather and file at the district office a petition with the requisite number of signatures. Gathering that number of signatures within the 30-day window is a major undertaking and infrequently accomplished.

With the adequacy referendum, voters have a four-month window during which they can file a petition seeking to place the question on the ballot. The new provision permits the filing of a petition not more than ten months and not less than six months before the consolidated election is to occur. This four-month window does not include the time prior to the filing window opening, so as a practical matter, voters have more than four months to circulate petitions gathering the requisite signatures. Unlike a backdoor referendum, this expanded signature gathering and filing period gives a motivated group of voters a significant opportunity to meet the statutory requirement to place the question on the ballot.

Once gathered, voters must file the petition with the local election authority. In most cases, this will be the County Clerk except for those counties that have established a board of election commissioners, such as DuPage County. If a school district has territory in more than one county, the petition is to be filed with the Illinois State Board of Elections.

Submitting the Petition

Once filed, the petition is subject to the same scrutiny regarding its validity as any other petition filed by a candidate for public office or in support of a public question.

The most common objections raised seek to invalidate a signature and include whether:

- ☒ The petition signer is registered to vote.
- ☒ The person lives at the address provided on the petition.
- ☒ The signer lives in the district.
- ☒ The signature is genuine and actually made by that person.
- ☒ The person has signed more than once.
- ☒ The address is complete.

Other objections focus on the entire petition and include the actions of the petition circulator, proper notarization and the binding of the petition.

Any objections to the petition must be made within five business days after the last date for filing the petition. With the adequacy referendum's four month filing window, the objection period will vary depending on when the petition is filed. A savvy petition filer will wait until the day prior to six months before the consolidated election so as to limit any objectors to five business days to identify, research and file an objection. If the petition is filed at the beginning of the four-month filing window, the objector would have four months and five business days to make any objection to the petition.

Objecting to a Petition

Neither the board of education as an entity nor the administration may be an objector nor may district funds be spent in objecting to a petition. An individual board member can, acting in their private capacity, participate in the objection process. There are three key laws that will govern the board and administration in the event of a petition and/or objection.

- 1. The Election Interference Law** provides that no public funds can be spent to urge voters for or against a public question. However, public funds can be spent to disseminate factual information regarding the impact of a referendum passing or failing to pass.
- 2. The Local Government Employees Political Rights Act** protects district employees in exercising their political rights but prohibits them from engaging in political activities while at work or on duty.
- 3. Finally, the State Officials and Employees Ethics Act** prohibits:
 - Conducting political activities while a public employee is at work.
 - Exerting pressure on others as a condition of employment to conduct political activities.
 - Bestowing or receiving additional employment rewards for conducting political activities.

In short, any objection to an adequacy referendum petition must be led and funded by members of the community or board members acting in their private capacity. With that caveat, however, the board and the administration can play an important role in educating the community on the impact of a reduction in the district's educational fund levy. The administration can prepare and distribute FAQs and other materials with factual information as to how the question came to be on the ballot and the effects of its passage, such as increases in class size, program cutbacks, deferral of maintenance items and other consequences.

Individual board members can express support for or against the referendum, wear a button, place a sign in their yard, make phone calls, send out leaflets & brochures, contribute money to citizens group, participate in a citizens group for/against the referendum and speak at meetings in local homes and organizations. The key for any of these activities is to make it clear that the board member is acting personally and not for the entire board.

If the Referendum is Successful

After the votes are counted and if the adequacy referendum is successful, the district's next tax extension will reflect a reduction in the educational fund tax levy not to exceed ten percent less than the district's previous educational fund tax levy and not to cause the district's adequacy target to fall below 110 percent for the levy the reduction is sought.

In PTELL counties, tax extension officials will have to calculate two limiting rates — one for the educational fund subject to the adequacy referendum results and the other for the other district funds. In non-PTELL counties, there will be a special limiting rate calculated for the educational fund only. It is likely that the Illinois Department of Revenue will be revising its PTELL Technical Manual and guidance to tax extension officials considering Section 18-206. For PTELL districts, it does not appear that a successful adequacy referendum will have any effect on a school district's ability to access equalized assessed values from new construction, TIF districts coming to an end, expired incentives and formerly exempt properties, as these items fall outside the limiting rate calculation. However, it remains unclear how the tax extension officials will know if the reduction will cause a school district's adequacy target to fall below 110 percent.



An Opportunity to Educate

The new adequacy referendum provides voters with another option to express themselves on school district levying decisions, as well as an opportunity for boards and administrations to communicate and educate the community on how and why revenue is raised and spent. For those school districts at or above the 110 percent adequacy target and thus subject to Section 18-206, this new law is one more topic to consider as school district budgets and levies are developed going forward.