CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1238

Citations Affected: IC 6-1.1-20; IC 20-46-1.

Synopsis: Advocacy with public funds. Provides that during the period beginning with the adoption of a resolution by a school corporation to place a school levy referendum question on the ballot and continuing through the day on which the referendum is submitted to the voters, the school corporation may not promote a position on the referendum by taking certain actions. Provides that a political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of the petition and remonstrance process. (Under current law, such a prohibition applies under the capital projects referendum statutes.) Provides that the ballot language for a capital project referendum must first be approved by the department of local government finance (DLGF). (Under current law, the DLGF makes recommendations concerning the ballot language.) Provides that the language of a school referendum levy question to be submitted to voters must first be approved by the DLGF. Prohibits a person or organization that provides goods or services to a school corporation under contract from spending money to promote a position on a school corporation's capital project petition and remonstrance, capital project referendum, or referendum tax levy, unless: (1) the person is an employee of the school corporation whose employment is governed by a collective bargaining contract or employment contract; or (2) the person or organization has a contract with a school corporation solely for the use of the school corporation's facilities. Provides that if a referendum levy is approved by the voters in a school corporation in a calendar year, another referendum levy question may not be placed on the ballot in the school corporation in the following calendar year. Provides that if a school corporation imposes a referendum levy approved in a referendum, the school corporation may not simultaneously impose more than one additional referendum levy approved in a subsequent referendum. Provides that advocacy or discussion by certain officials concerning a petition and remonstrance or referendum is allowed and is not considered a use of public funds. Prohibits an employee of a school corporation from initiating discussion of a petition and remonstrance or referendum at a meeting between a teacher and parents of a student regarding the student's performance or behavior at school. Provides that an official of a political subdivision who is authorized to discuss or advocate for or against a petition or remonstrance or a referendum may be assisted by an employee of the political subdivision. Removes the county fiscal body from the school referendum levy process. Provides that the county fiscal body is not required to certify the referendum question. Repeals a superseded provision. **(This conference committee report is the same as the Senate-passed**

version of EHB 1238 (reprinted March 23, 2011), except that IC 6-1.1-20-10(d) (SECTION 3), IC 6-1.1-20-10.1(d) (SECTION 4), and IC 20-46-1-20(c) (SECTION 10) concerning prohibitions on making expenditures to promote a position on a referendum or petition and remonstrance are modified to resemble the House passed versions in HB 1238 (reprinted February 11, 2011), with an additional exception to these prohibitions on spending money to promote a position on a referendum or a petition and remonstrance for employees of a school corporation governed by a collective bargaining contract or an employment contract.)

Effective: Upon passage; July 1, 2011.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1238 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 6-1.1-20-3.1, AS AMENDED BY SEA 295-2011, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.1. (a) This section applies only to the following:

(1) A controlled project (as defined in section 1.1 of this chapter as in effect June 30, 2008) for which the proper officers of a political subdivision make a preliminary determination in the manner described in subsection (b) before July 1, 2008.

(2) An elementary school building, middle school building, or other school building for academic instruction that:

(A) is a controlled project;

(B) will be used for any combination of kindergarten through grade 8;

(C) will not be used for any combination of grade 9 through grade 12; and

(D) will not cost more than ten million dollars ($10,000,000).

(3) A high school building or other school building for academic instruction that:

(A) is a controlled project;

(B) will be used for any combination of grade 9 through grade 12;

(C) will not be used for any combination of kindergarten through grade 8; and

(D) will not cost more than twenty million dollars ($20,000,000).

(4) Any other controlled project that:

(A) is not a controlled project described in subdivision (1), (2), or (3); and

(B) will not cost the political subdivision more than the lesser of the following:

(i) Twelve million dollars ($12,000,000).

(ii) An amount equal to one percent (1%) of the total gross assessed value of property within the political subdivision on the last assessment date, if that amount is at least one million dollars ($1,000,000).

(b) A political subdivision may not impose property taxes to pay debt service on bonds or lease rentals on a lease for a controlled project without completing the following procedures:

(1) The proper officers of a political subdivision shall:

(A) publish notice in accordance with IC 5-3-1; and

(B) send notice by first class mail to the circuit court clerk and to any organization that delivers to the officers, before January 1 of that year, an annual written request for such notices;

of any meeting to consider adoption of a resolution or an ordinance making a preliminary determination to issue bonds or enter into a lease and shall conduct a public hearing on a preliminary determination before adoption of the resolution or ordinance.

(2) When the proper officers of a political subdivision make a preliminary determination to issue bonds or enter into a lease for a controlled project, the officers shall give notice of the preliminary determination by:

(A) publication in accordance with IC 5-3-1; and

(B) first class mail to the circuit court clerk and to the organizations described in subdivision (1)(B).

(3) A notice under subdivision (2) of the preliminary determination of the political subdivision to issue bonds or enter into a lease for a controlled project must include the following information:

(A) The maximum term of the bonds or lease.

(B) The maximum principal amount of the bonds or the maximum lease rental for the lease.

(C) The estimated interest rates that will be paid and the total interest costs associated with the bonds or lease.

(D) The purpose of the bonds or lease.

(E) A statement that any owners of property within the political subdivision or registered voters residing within the political subdivision who want to initiate a petition and remonstrance process against the proposed debt service or lease payments must file a petition that complies with subdivisions (4) and (5) not later than thirty (30) days after publication in accordance with IC 5-3-1.

(F) With respect to bonds issued or a lease entered into to open:

(i) a new school facility; or

(ii) an existing facility that has not been used for at least three (3) years and that is being reopened to provide additional classroom space;

the estimated costs the school corporation expects to incur annually to operate the facility.

(G) A statement of whether the school corporation expects to appeal for a new facility adjustment (as defined in IC 20-45-1-16 (repealed) before January 1, 2009) for an increased maximum permissible tuition support levy to pay the estimated costs described in clause (F).

(H) The political subdivision's current debt service levy and rate and the estimated increase to the political subdivision's debt service levy and rate that will result if the political subdivision issues the bonds or enters into the lease.

(4) After notice is given, a petition requesting the application of a petition and remonstrance process may be filed by the lesser of:

(A) one hundred (100) persons who are either owners of property within the political subdivision or registered voters residing within the political subdivision; or

(B) five percent (5%) of the registered voters residing within the political subdivision.

(5) The state board of accounts shall design and, upon request by the county voter registration office, deliver to the county voter registration office or the county voter registration office's designated printer the petition forms to be used solely in the petition process described in this section. The county voter registration office shall issue to an owner or owners of property within the political subdivision or a registered voter residing within the political subdivision the number of petition forms requested by the owner or owners or the registered voter. Each form must be accompanied by instructions detailing the requirements that:

(A) the carrier and signers must be owners of property or registered voters;

(B) the carrier must be a signatory on at least one (1) petition;

(C) after the signatures have been collected, the carrier must swear or affirm before a notary public that the carrier witnessed each signature; and

(D) govern the closing date for the petition period.

Persons requesting forms may be required to identify themselves as owners of property or registered voters and may be allowed to pick up additional copies to distribute to other owners of property or registered voters. Each person signing a petition must indicate whether the person is signing the petition as a registered voter within the political subdivision or is signing the petition as the owner of property within the political subdivision. A person who signs a petition as a registered voter must indicate the address at which the person is registered to vote. A person who signs a

petition as an owner of property must indicate the address of the property owned by the person in the political subdivision.

(6) Each petition must be verified under oath by at least one (1) qualified petitioner in a manner prescribed by the state board of accounts before the petition is filed with the county voter registration office under subdivision (7).

(7) Each petition must be filed with the county voter registration office not more than thirty (30) days after publication under subdivision (2) of the notice of the preliminary determination.

(8) The county voter registration office shall determine whether each person who signed the petition is a registered voter. The county voter registration office shall, not more than fifteen (15) business days after receiving a petition, forward a copy of the petition to the county auditor. Not more than ten (10) business days after receiving the copy of the petition, the county auditor shall provide to the county voter registration office a statement verifying:

(A) whether a person who signed the petition as a registered voter but is not a registered voter, as determined by the county voter registration office, is the owner of property in the political subdivision; and

(B) whether a person who signed the petition as an owner of property within the political subdivision does in fact own property within the political subdivision.

(9) The county voter registration office shall, not more than ten (10) business days after receiving the statement from the county auditor under subdivision (8), make the final determination of the number of petitioners that are registered voters in the political subdivision and, based on the statement provided by the county auditor, the number of petitioners that own property within the political subdivision. Whenever the name of an individual who signs a petition form as a registered voter contains a minor variation from the name of the registered voter as set forth in the records of the county voter registration office, the signature is presumed to be valid, and there is a presumption that the individual is entitled to sign the petition under this section. Except as otherwise provided in this chapter, in determining whether an individual is a registered voter, the county voter registration office shall apply the requirements and procedures used under IC 3 to determine whether a person is a registered voter for purposes of voting in an election governed by IC 3. However, an individual is not required to comply with the provisions concerning providing proof of identification to be considered a registered voter for purposes of this chapter. A person is entitled to sign a petition only one (1) time in a particular petition and remonstrance process under this chapter, regardless of whether the person owns more than one (1) parcel of real property, mobile home assessed as personal property, or manufactured home assessed as personal property, or a combination of those types of property within the subdivision and regardless of whether the person is both a registered voter in the political subdivision and the owner of

property within the political subdivision. Notwithstanding any other provision of this section, if a petition is presented to the county voter registration office within forty-five (45) days before an election, the county voter registration office may defer acting on the petition, and the time requirements under this section for action by the county voter registration office do not begin to run until five (5) days after the date of the election.

(10) The county voter registration office must file a certificate and each petition with:

(A) the township trustee, if the political subdivision is a township, who shall present the petition or petitions to the township board; or

(B) the body that has the authority to authorize the issuance of the bonds or the execution of a lease, if the political subdivision is not a township;

within thirty-five (35) business days of the filing of the petition requesting a petition and remonstrance process. The certificate must state the number of petitioners that are owners of property within the political subdivision and the number of petitioners who are registered voters residing within the political subdivision.

If a sufficient petition requesting a petition and remonstrance process is not filed by owners of property or registered voters as set forth in this section, the political subdivision may issue bonds or enter into a lease by following the provisions of law relating to the bonds to be issued or lease to be entered into.

(c) This subsection applies only to a political subdivision that, after April 30, 2011, adopts an ordinance or a resolution making a preliminary determination to issue bonds or enter into a lease subject to this section and section 3.2 of this chapter. A political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of this section and section 3.2 of this chapter.

SECTION 2. IC 6-1.1-20-3.6, AS AMENDED BY P.L.113-2010, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3.6. (a) Except as provided in sections 3.7 and 3.8 of this chapter, this section applies only to a controlled project described in section 3.5(a) of this chapter.

(b) If a sufficient petition requesting the application of the local public question process has been filed as set forth in section 3.5 of this chapter, a political subdivision may not impose property taxes to pay debt service on bonds or lease rentals on a lease for a controlled project unless the political subdivision's proposed debt service or lease rental is approved in an election on a local public question held under this section.

(c) Except as provided in subsection ~~(j),~~ **(l),** the following question shall be submitted to the eligible voters at the election conducted under this section:

"Shall _____ (insert the name of the political subdivision) issue bonds or enter into a lease to finance _____ (insert a brief description of the controlled project), which is estimated to cost not more than _____ (insert the total cost of the project)

and is estimated to increase the property tax rate for debt service by _____ (insert increase in tax rate as determined by the department of local government finance)?".

The public question must appear on the ballot in the form approved by the county election board. If the political subdivision proposing to issue bonds or enter into a lease is located in more than one (1) county, the county election board of each county shall jointly approve the form of the public question that will appear on the ballot in each county. The form approved by the county election board may differ from the language certified to the county election board by the county auditor. If the county election board approves the language of a public question under this subsection, ~~after June 30, 2010,~~ the county election board shall submit the language to the department of local government finance for review.

(d) This subsection applies to ballot language submitted by the county election board under subsection (c) before May 1, 2011. The department of local government finance shall review the language of the public question to evaluate whether the description of the controlled project is accurate and is not biased against either a vote in favor of the controlled project or a vote against the controlled project. The department of local government finance may recommend that the ballot language be used as submitted or recommend modifications to the ballot language as necessary to ensure that the description of the controlled project is accurate and is not biased. The department of local government finance shall send its recommendations to the county election board not more than ten (10) days after the language of the public question is submitted to the department for review. After reviewing the recommendations of the department of local government finance under this subsection, the county election board shall take final action to approve ballot language. The finally adopted ballot language may differ from the recommendations made by the department of local government finance.

(e) This subsection applies to ballot language submitted by the county election board under subsection (c) after April 30, 2011. The department of local government finance shall review the language of the public question to evaluate whether the description of the controlled project is accurate and is not biased against either a vote in favor of the controlled project or a vote against the controlled project. The department of local government finance may either approve the ballot language as submitted or recommend that the ballot language be modified as necessary to ensure that the description of the controlled project is accurate and is not biased. The department of local government finance shall certify its approval or recommendations to the county auditor and the county election board not more than ten (10) days after the language of the public question is submitted to the department for review. If the department of local government finance recommends a modification to the ballot language, the county election board shall, after reviewing the recommendations of the department of local government finance, submit modified ballot language to the department for the department's approval or recommendation of

any additional modifications. The public question may not be certified by the county auditor under subsection (f) unless the department of local government finance has first certified the department's final approval of the ballot language for the public question.

~~(d)~~ **(f)** The county auditor shall certify the finally approved public question ~~described in subsection (c)~~ under IC 3-10-9-3 to the county election board of each county in which the political subdivision is located. The certification must occur not later than noon:

(1) sixty (60) days before a primary election if the public question is to be placed on the primary or municipal primary election ballot; or

(2) August 1 if the public question is to be placed on the general or municipal election ballot.

Subject to the certification requirements and deadlines under this subsection and except as provided in subsection ~~(j),~~ **(l),** the public question shall be placed on the ballot at the next primary election, general election, or municipal election in which all voters of the political subdivision are entitled to vote. However, if a primary election, general election, or municipal election will not be held during the first year in which the public question is eligible to be placed on the ballot under this section and if the political subdivision requests the public question to be placed on the ballot at a special election, the public question shall be placed on the ballot at a special election to be held on the first Tuesday after the first Monday in May or November of the year. The certification must occur not later than noon sixty (60) days before a special election to be held in May (if the special election is to be held in May) or noon on August 1 (if the special election is to be held in November). However, in 2009, a political subdivision may hold a special election under this section on any date scheduled for the special election if notice of the special election was given before July 1, 2009, to the election division of the secretary of state's office as provided in IC 3-10-8-4. The fiscal body of the political subdivision that requests the special election shall pay the costs of holding the special election. The county election board shall give notice under IC 5-3-1 of a special election conducted under this subsection. A special election conducted under this subsection is under the direction of the county election board. The county election board shall take all steps necessary to carry out the special election.

~~(e)~~ **(g)** The circuit court clerk shall certify the results of the public question to the following:

(1) The county auditor of each county in which the political subdivision is located.

(2) The department of local government finance.

~~(f)~~ **(h)** Subject to the requirements of IC 6-1.1-18.5-8, the political subdivision may issue the proposed bonds or enter into the proposed lease rental if a majority of the eligible voters voting on the public question vote in favor of the public question.

~~(g)~~ **(i)** If a majority of the eligible voters voting on the public question vote in opposition to the public question, both of the following apply:

(1) The political subdivision may not issue the proposed bonds or enter into the proposed lease rental.

(2) Another public question under this section on the same or a substantially similar project may not be submitted to the voters earlier than one (1) year after the date of the election.

~~(h)~~ **(j)** IC 3, to the extent not inconsistent with this section, applies to an election held under this section.

~~(i)~~ **(k)** A political subdivision may not artificially divide a capital project into multiple capital projects in order to avoid the requirements of this section and section 3.5 of this chapter.

~~(j)~~ **(l)** This subsection applies to a political subdivision for which a petition requesting a public question has been submitted under section 3.5 of this chapter. The legislative body (as defined in IC 36-1-2-9) of the political subdivision may adopt a resolution to withdraw a controlled project from consideration in a public question. If the legislative body provides a certified copy of the resolution to the county auditor and the county election board not later than forty-nine (49) days before the election at which the public question would be on the ballot, the public question on the controlled project shall not be placed on the ballot and the public question on the controlled project shall not be held, regardless of whether the county auditor has certified the public question to the county election board. If the withdrawal of a public question under this subsection requires the county election board to reprint ballots, the political subdivision withdrawing the public question shall pay the costs of reprinting the ballots. If a political subdivision withdraws a public question under this subsection that would have been held at a special election and the county election board has printed the ballots before the legislative body of the political subdivision provides a certified copy of the withdrawal resolution to the county auditor and the county election board, the political subdivision withdrawing the public question shall pay the costs incurred by the county in printing the ballots. If a public question on a controlled project is withdrawn under this subsection, a public question under this section on the same controlled project or a substantially similar controlled project may not be submitted to the voters earlier than one (1) year after the date the resolution withdrawing the public question is adopted.

~~(k)~~ **(m)** If a public question regarding a controlled project is placed on the ballot to be voted on at a public question under this section, the political subdivision shall submit to the department of local government finance, at least thirty (30) days before the election, the following information regarding the proposed controlled project for posting on the department's Internet web site:

(1) The cost per square foot of any buildings being constructed as part of the controlled project.

(2) The effect that approval of the controlled project would have on the political subdivision's property tax rate.

(3) The maximum term of the bonds or lease.

(4) The maximum principal amount of the bonds or the maximum lease rental for the lease.

(5) The estimated interest rates that will be paid and the total

interest costs associated with the bonds or lease.

(6) The purpose of the bonds or lease.

(7) In the case of a controlled project proposed by a school corporation:

(A) the current and proposed square footage of school building space per student;

(B) enrollment patterns within the school corporation; and

(C) the age and condition of the current school facilities.

SECTION 3. IC 6-1.1-20-10, AS AMENDED BY P.L.182-2009(ss), SECTION 148, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. (a) This section applies to a political subdivision that adopts an ordinance or a resolution making a preliminary determination to issue bonds or enter into a lease. **Except as otherwise provided in this section,** during the period commencing with the adoption of the ordinance or resolution and, if a petition and remonstrance process is commenced under section 3.2 of this chapter, continuing through the sixty (60) day period commencing with the notice under section 3.2(b)(1) of this chapter, the political subdivision seeking to issue bonds or enter into a lease for the proposed controlled project may not promote a position on the petition or remonstrance by doing any of the following:

(1) ~~Allowing~~ **Using** facilities or equipment, including mail and messaging systems, owned by the political subdivision ~~to be used for public relations purposes~~ to promote a position on the petition or remonstrance, unless equal access to the facilities or equipment is given to persons with a position opposite to that of the political subdivision.

(2) Making an expenditure of money from a fund controlled by the political subdivision to promote a position on the petition or remonstrance or to pay for the gathering of signatures on a petition or remonstrance. This subdivision does not prohibit a political subdivision from making an expenditure of money to an attorney, an architect, registered professional engineer, a construction manager, or a financial adviser for professional services provided with respect to a controlled project.

(3) Using an employee to promote a position on the petition or remonstrance during the employee's normal working hours or paid overtime, or otherwise compelling an employee to promote a position on the petition or remonstrance at any time. **However, if a person described in subsection (f) is advocating for or against a position on the petition or remonstrance or discussing the petition or remonstrance as authorized under subsection (f), an employee of the political subdivision may assist the person in presenting information on the petition or remonstrance, if requested to do so by the person described in subsection (f).**

(4) In the case of a school corporation, promoting a position on a petition or remonstrance by:

(A) using students to transport written materials to their residences or in any way ~~directly~~ involving students in a school organized promotion of a position; ~~or~~

(B) including a statement within another communication sent to the students' residences; **or**

(C) initiating discussion of the petition and remonstrance process at a meeting between a teacher and parents of a student regarding the student's performance or behavior at school. However, if the parents initiate a discussion of the petition and remonstrance process at the meeting, the teacher may acknowledge the issue and direct the parents to a source of factual information on the petition and remonstrance process.

However, this section does not prohibit an **official or** employee of the political subdivision from carrying out duties with respect to a petition or remonstrance that are part of the normal and regular conduct of the **official's or** employee's office or agency, **including the furnishing of factual information regarding the petition and remonstrance in response to inquiries from any person.**

(b) A person may not solicit or collect signatures for a petition or remonstrance on property owned or controlled by the political subdivision.

(c) The staff and employees of a school corporation may not personally identify a student as the child of a parent or guardian who supports or opposes a petition or remonstrance.

(d) This subsection does not apply to:

(1) a personal expenditure to promote a position on a petition and remonstrance by an employee of a school corporation whose employment is governed by a collective bargaining contract or an employment contract; or

(2) an expenditure to promote a position on a petition and remonstrance by a person or an organization that has a contract or an arrangement with the school corporation solely for the use of the school corporation's facilities.

A person or an organization that has a contract or **an** arrangement (whether formal or informal) with a school corporation ~~for the use of any of the school corporation's facilities~~ **to provide goods or services to the school corporation** may not spend any money to promote a position on the petition or remonstrance. A person or an organization that violates this subsection commits a Class A infraction.

(e) An attorney, an architect, registered professional engineer, a construction manager, or a financial adviser for professional services provided with respect to a controlled project may not spend any money to promote a position on the petition or remonstrance. A person who violates this subsection:

(1) commits a Class A infraction; and

(2) is barred from performing any services with respect to the controlled project.

(f) **Notwithstanding any other law,** an elected or appointed public official of the political subdivision **(including any school board member and school corporation superintendent), a school corporation assistant superintendent, or a chief school business official of a school corporation** may **at any time:**

(1) personally advocate for or against a position on the petition or

remonstrance; **or**

(2) discuss the petition or remonstrance with any individual, group, or organization or personally advocate for or against a position on the petition or remonstrance before any individual, group, or organization;

so long as it is not done by using public funds. **Advocacy or discussion allowed under this subsection is not considered a use of public funds. However, this subsection does not authorize or apply to advocacy or discussion by a school board member, superintendent, assistant superintendent, or school business official to or with students that occurs during the regular school day.**

SECTION 4. IC 6-1.1-20-10.1, AS AMENDED BY P.L.182-2009(ss), SECTION 149, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10.1. (a) This section applies only to a political subdivision that, after June 30, 2008, adopts an ordinance or a resolution making a preliminary determination to issue bonds or enter into a lease subject to sections 3.5 and 3.6 of this chapter.

(b) **Except as otherwise provided in this section,** during the period beginning with the adoption of the ordinance or resolution and continuing through the day on which a local public question is submitted to the voters of the political subdivision under section 3.6 of this chapter, the political subdivision seeking to issue bonds or enter into a lease for the proposed controlled project may not promote a position on the local public question by doing any of the following:

(1) ~~Allowing~~ **Using** facilities or equipment, including mail and messaging systems, owned by the political subdivision ~~to be used for public relations purposes~~ to promote a position on the local public question, unless equal access to the facilities or equipment is given to persons with a position opposite to that of the political subdivision.

(2) Making an expenditure of money from a fund controlled by the political subdivision to promote a position on the local public question. This subdivision does not prohibit a political subdivision from making an expenditure of money to an attorney, an architect, a registered professional engineer, a construction manager, or a financial adviser for professional services provided with respect to a controlled project.

(3) Using an employee to promote a position on the local public question during the employee's normal working hours or paid overtime, or otherwise compelling an employee to promote a position on the local public question at any time. **However, if a person described in subsection (f) is advocating for or against a position on the local public question or discussing the local public question as authorized under subsection (f), an employee of the political subdivision may assist the person in presenting information on the local public question, if requested to do so by the person described in subsection (f).**

(4) In the case of a school corporation, promoting a position on a local public question by:

(A) using students to transport written materials to their

residences or in any way ~~directly~~ involving students in a school organized promotion of a position; ~~or~~

(B) including a statement within another communication sent to the students' residences; **or**

(C) initiating discussion of the local public question at a meeting between a teacher and parents of a student regarding the student's performance or behavior at school. However, if the parents initiate a discussion of the local public question at the meeting, the teacher may acknowledge the issue and direct the parents to a source of factual information on the local public question.

However, this section does not prohibit an **official or** employee of the political subdivision from carrying out duties with respect to a local public question that are part of the normal and regular conduct of the **official's or** employee's office or agency, **including the furnishing of factual information regarding the local public question in response to inquiries from any person.**

(c) The staff and employees of a school corporation may not personally identify a student as the child of a parent or guardian who supports or opposes a controlled project subject to a local public question held under section 3.6 of this chapter.

(d) **This subsection does not apply to:**

(1) a personal expenditure to promote a position on a local public question by an employee of a school corporation whose employment is governed by a collective bargaining contract or an employment contract; or

(2) an expenditure to promote a position on a local public question by a person or an organization that has a contract or an arrangement (whether formal or informal) with the school corporation solely for the use of the school corporation's facilities.

A person or an organization that has a contract or **an** arrangement (whether formal or informal) with a school corporation ~~for the use of any of the school corporation's facilities~~ **to provide goods or services to the school corporation** may not spend any money to promote a position on a local public question. A person or an organization that violates this subsection commits a Class A infraction.

(e) An attorney, an architect, a registered professional engineer, a construction manager, or a financial adviser for professional services provided with respect to a controlled project may not spend any money to promote a position on a local public question. A person who violates this subsection:

(1) commits a Class A infraction; and

(2) is barred from performing any services with respect to the controlled project.

(f) **Notwithstanding any other law,** an elected or appointed public official of the political subdivision **(including any school board member and school corporation superintendent), a school corporation assistant superintendent, or a chief school business official of a school corporation** may **at any time:**

(1) personally advocate for or against a position on the local

public question; **or**

(2) discuss the public question with any individual, group, or organization or otherwise personally advocate for or against a position on the public question before any individual, group, or organization;

so long as it is not done by using public funds. **Advocacy or discussion allowed under this subsection is not considered a use of public funds. However, this subsection does not authorize or apply to advocacy or discussion by a school board member, superintendent, assistant superintendent, or school business official to or with students that occurs during the regular school day.**

(g) A student may use school equipment or facilities to report or editorialize about a local public question as part of the news coverage of the referendum by student newspaper or broadcast.

SECTION 5. IC 20-46-1-8, AS AMENDED BY P.L.41-2010, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Subject to this chapter, the governing body of a school corporation may adopt a resolution to place a referendum under this chapter on the ballot for either of the following purposes:

(1) The governing body of the school corporation determines that it cannot, in a calendar year, carry out its public educational duty unless it imposes a referendum tax levy under this chapter.

(2) The governing body of the school corporation determines that a referendum tax levy under this chapter should be imposed to replace property tax revenue that the school corporation will not receive because of the application of the credit under IC 6-1.1-20.6.

(b) The governing body of the school corporation shall certify a copy of the resolution to the department of local government finance, ~~and the~~ **including (in the case of a resolution certified to the department of local government finance after April 30, 2011) the language for the question required by section 10 of this chapter. In the case of a resolution certified to the department of local government finance after April 30, 2011, the department shall review the language for compliance with section 10 of this chapter and either approve or reject the language. The department shall send its decision to the governing body of the school corporation not more than ten (10) days after the resolution is submitted to the department. If the language is approved, the governing body of the school corporation shall certify a copy of the resolution, including the language for the question and the department's approval, to:**

(1) the county fiscal body **(for informational purposes only); and**

(2) the circuit court clerk;

of each county in which the school corporation is located.

SECTION 6. IC 20-46-1-13, AS AMENDED BY P.L.146-2008, SECTION 498, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. Each ~~county~~ **circuit court** clerk shall, upon receiving the question certified by the ~~county fiscal body~~ **governing body of a school corporation** under this chapter, call

a meeting of the county election board to make arrangements for the referendum.

SECTION 7. IC 20-46-1-15, AS AMENDED BY P.L.146-2008, SECTION 500, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. Each county election board shall cause:

(1) the question certified to the circuit court clerk by the ~~county fiscal body~~ **governing body of a school corporation** to be placed on the ballot in the form prescribed by IC 3-10-9-4; and

(2) an adequate supply of ballots and voting equipment to be delivered to the precinct election board of each precinct in which the referendum is to be held.

SECTION 8. IC 20-46-1-17, AS AMENDED BY P.L.146-2008, SECTION 501, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. Each precinct election board shall count the affirmative votes and the negative votes cast in the referendum and shall certify those two (2) totals to the county election board of each county in which the referendum is held. The circuit court clerk of each county shall, immediately after the votes cast in the referendum have been counted, certify the results of the referendum to the ~~county fiscal body. Upon receiving the certification of all the votes cast in the referendum, the county fiscal body shall promptly certify the result of the referendum to the~~ department of local government finance. If a majority of the individuals who voted in the referendum voted "yes" on the referendum question:

(1) the ~~county fiscal body~~ **department of local government finance** shall promptly notify the school corporation that the school corporation is authorized to collect, for the calendar year that next follows the calendar year in which the referendum is held, a levy not greater than the amount approved in the referendum;

(2) the levy may be imposed for the number of calendar years approved by the voters following the referendum for the school corporation in which the referendum is held; and

(3) the school corporation shall establish a fund under IC 20-40-3-1.

SECTION 9. IC 20-46-1-19.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 19.5. (a) If a referendum is approved by the voters in a school corporation under this chapter in a calendar year, another referendum may not be placed on the ballot in the school corporation under this chapter in the following calendar year.**

(b) Notwithstanding any other provision of this chapter and in addition to the restriction specified in subsection (a), if a school corporation imposes in a calendar year a referendum levy approved in a referendum under this chapter, the school corporation may not simultaneously impose in that calendar year more than one (1) additional referendum levy approved in a subsequent referendum under this chapter.

SECTION 10. IC 20-46-1-20 IS ADDED TO THE INDIANA

CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 20. (a) Except as otherwise provided in this section, during the period beginning with the adoption of a resolution by the governing body of a school corporation to place a referendum under this chapter on the ballot and continuing through the day on which the referendum is submitted to the voters, the school corporation may not promote a position on the referendum by doing any of the following:**

(1) Using facilities or equipment, including mail and messaging systems, owned by the school corporation to promote a position on the referendum, unless equal access to the facilities or equipment is given to persons with a position opposite to that of the school corporation.

(2) Making an expenditure of money from a fund controlled by the school corporation to promote a position on the referendum.

(3) Using an employee to promote a position on the referendum during the employee's normal working hours or paid overtime, or otherwise compelling an employee to promote a position on the referendum at any time. However, if a person described in subsection (d) is advocating for or against a position on the referendum or discussing the referendum as authorized under subsection (d), an employee of the school corporation may assist the person in presenting information on the referendum, if requested to do so by the person described in subsection (d).

(4) Promoting a position on the referendum by:

(A) using students to transport written materials to their residences or in any way involving students in a school organized promotion of a position;

(B) including a statement within another communication sent to the students' residences; or

(C) initiating discussion of the referendum at a meeting between a teacher and parents of a student regarding the student's performance or behavior at school. However, if the parents initiate a discussion of the referendum at the meeting, the teacher may acknowledge the issue and direct the parents to a source of factual information on the referendum.

However, this section does not prohibit an official or employee of the school corporation from carrying out duties with respect to a referendum that are part of the normal and regular conduct of the official's or employee's office or agency, including the furnishing of factual information regarding the referendum in response to inquiries from any person.

(b) The staff and employees of a school corporation may not personally identify a student as the child of a parent or guardian who supports or opposes the referendum.

(c) This subsection does not apply to:

(1) a personal expenditure to promote a position on a local public question by an employee of a school corporation whose

employment is governed by a collective bargaining contract or an employment contract; or

(2) an expenditure to promote a position on a local public question by a person or an organization that has a contract or an arrangement (whether formal or informal) with the school corporation solely for the use of the school corporation's facilities.

A person or an organization that has a contract or arrangement (whether formal or informal) with a school corporation to provide goods or services to the school corporation may not spend any money to promote a position on the petition or remonstrance. A person or an organization that violates this subsection commits a Class A infraction.

(d) Notwithstanding any other law, an elected or appointed school board member or a school corporation superintendent, school corporation assistant superintendent, or chief school business official of a school corporation may at any time:

(1) personally advocate for or against a position on a referendum; or

(2) discuss the referendum with any individual, group, or organization or personally advocate for or against a position on a referendum before any individual, group, or organization;

so long as it is not done by using public funds. Advocacy or discussion allowed under this subsection is not considered a use of public funds. However, this subsection does not authorize or apply to advocacy or discussion by a school board member, superintendent, assistant superintendent, or school business official to or with students that occurs during the regular school day.

(e) A student may use school equipment or facilities to report or editorialize about a local public question as part of the news coverage of the referendum by a student newspaper or broadcast.

SECTION 11. IC 20-46-1-12 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 12. **An emergency is declared for this act.**

(Reference is to EHB 1238 as reprinted March 23, 2011.)

Conference Committee Report
on
Engrossed House Bill 1238

Signed by:

_____	_____
Representative Noe Chairperson	Senator Charbonneau
_____	_____
Representative Thompson	Senator Mishler
House Conferees	**Senate Conferees**