

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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TO: All School Corporations

FROM: Wesley R. Bennett, Commissioner

RE: Legislation Affecting School Funding Matters

DATE: June 21, 2023

Introduction

The Department of Local Government Finance (hereafter “Department” unless clarification is warranted) issues this memorandum to inform interested parties about changes made to laws concerning school corporation funding. The affecting legislation includes House Enrolled Act 1001-2023 (“HEA 1001”), House Enrolled Act 1454-2023 (“HEA 1454”), House Enrolled Act 1499-2023 (“HEA 1499”), and Senate Enrolled Act 391-2023 (“SEA 391”), all signed by Governor Eric J. Holcomb on May 4, 2023. This memorandum is for informative purposes only and is not a substitute for reading the law.

I. Referendum Levy Distributions to Charter Schools

Several sections in SEA 391 provide for distributions to charter schools (excluding virtual charter schools and adult high schools) of a certain amount of property tax revenue resulting from an operating referendum tax levy under Ind. Code § 20-46-1 or a school safety referendum tax levy Ind. Code § 20-46-9 that:

- (1) was imposed by a school corporation located in one of the following counties: Lake, Marion, St. Joseph, or Vanderburgh; and
- (2) for which the resolution to place the referendum on a ballot was adopted after May 10, 2023.

The relevant sections in SEA 391 are as follows:

- (1) Section 5, which adds Ind. Code § 20-24-7-6.2 as a new section.
- (2) Section 30, which amends Ind. Code § 20-46-1-8.
- (3) Section 31, which amends Ind. Code § 20-46-1-8.5.
- (4) Section 32, which amends Ind. Code § 20-46-1-10.
- (5) Section 34, which adds Ind. Code § 20-46-1-21 as a new section.
- (6) Section 35, which amends Ind. Code § 20-46-9-6.
- (7) Section 36, which amends Ind. Code § 20-46-9-7.
- (8) Section 37, which amends Ind. Code § 20-46-9-9.

(9) Section 38, which adds Ind. Code § 20-46-9-22 as a new section.

Other sections in SEA 391 amend existing statutes that either make technical corrections in light of the above, or do not pertain to the referendum process itself, and therefore have been omitted from this memorandum. The sections referenced above are effective upon passage. However, the legislative changes only apply to resolutions adopted after May 10, 2023, to place a referendum on a ballot. In addition, references to charter schools going forward will exclude virtual charter schools and adult high schools, which the above-cited statutes exclude from being eligible for a distribution of referendum revenue.

A. Required Information in a Resolution to Place a Referendum on a Ballot

Sections 30 & 35 amend Ind. Code §§ 20-46-1-8 and 20-46-9-6, respectively, to add the following requirements for a school corporation adopting a resolution to place a referendum on a ballot:

- (1) The resolution must specify that a portion of the proceeds of the proposed levy will be distributed to charter schools that voluntarily elect to participate in the referendum.
- (2) The resolution must include a projection of the amount that the school corporation expects to be distributed to a charter school.
- (3) At least sixty (60) days before the resolution is voted on by the school board, the school corporation must contact the Department of Education to determine the number of students in kindergarten through grade 12 who:
 - (A) have legal settlement in the school corporation but attend a charter school; and
 - (B) receives not more than fifty percent (50%) virtual instruction.

The Department of Education shall provide the school corporation with this number, disaggregated for each charter school. The Department of Local Government Finance shall prescribe the manner in which the projection is calculated.

Therefore, the Department prescribes the following formula for calculating the projection for each participating charter school (excluding adult high schools and virtual charter schools):

STEP ONE: Determine the number of students who reside within the attendance area of the school corporation who are currently included in the ADM of the charter school.

STEP TWO: Add the current ADM of the school corporation and the STEP ONE result.

STEP THREE: Divide STEP TWO by STEP ONE.

Represented as an equation:

$$\frac{\text{Current ADM of Charter School}}{\text{Current Count of Students in School Corporation}} = \text{Projected Count}$$

This calculation determines the projection as a proportionate share of the charter school ADM to the students with legal residence in the school corporation, whether the students attend the school corporation or a charter school. It is modeled off of the calculation the county auditor must use to determine the distribution. See Part D, below.

(4) At least forty-five (45) days before the resolution is voted on by the school board, the school corporation shall contact each charter school, identified by the Department of Education, to determine whether the charter school will participate in the referendum. The charter school must respond in writing at least fifteen (15) days before the date the resolution is voted on by the school board.

(A) If the charter school elects not to participate, the school corporation may exclude the charter school from the distribution and the projection.

(B) If the charter school elects to participate, it may receive distribution and must be included in the projection. However, it must also contribute a proportionate share of the cost to conduct the referendum, based on the total combined ADM of the school corporation and any participating charter schools.

(5) The school board shall take the projection into consideration when adopting the revenue spending plan.

B. Revenue Spending Plans

Under amended subsections Ind. Code §§ 20-46-1-8(g) & 20-46-9-6(g), the revenue spending plan must also include the projected revenue to be distributed to participating charter schools, taking into consideration any deviations in the plan if the actual distributions to charter schools are higher or lower than what is projected. The resolution must include for each participating charter school the estimated revenue, purposes for the levy, and estimated expenses for each purpose, already required in the revenue spending plan.

C. Referendum Disclosure Statement

Sections 30 & 35 of SEA 391 also require that the school corporation and a participating charter school proposing to place a referendum on the ballot to post a referendum disclosure statement (“statement”) on each school’s respective website. This statement must be posted at least thirty (30) days before the resolution is voted on by the school board.

The statement must contain the following information:

- (1) The salaries of all employees employed by the school corporation or charter school, listed from highest salary to lowest salary.
- (2) An acknowledgement that the school corporation or charter school is not committing any crime described in Ind. Code § 35-44.1-1.
- (3) A link to the state board of accounts' website of the school corporation's or charter school's most recent audit by the state board of accounts.
- (4) The current enrollment of the school corporation or charter school disaggregated by student group and race.
- (5) The school corporation's or charter school's high school graduation rate.
- (6) The school corporation's or charter school's annual retention rate for teachers for the previous five (5) years.

D. Determination of Amount Eligible for Distribution to Charter Schools

Sections 34 & 38 provide the means of calculating the amount a charter school is eligible to receive. To be eligible for a distribution, a charter school must elect to participate in a referendum. The Department of Education shall provide data and information to the county auditor in order to determine:

- (1) which charter schools are eligible to receive a distribution; and
- (2) the number of students who reside within the attendance area of the school corporation who are also included in the average daily membership ("ADM") for each charter school.

Charter schools that participate as an innovation network charter school under Ind. Code 20-25.7-5 is considered to have an ADM that is separate from the school corporation.

The calculation to determine the amount to distribute to a charter school is as follows:

STEP ONE: Determine, for each eligible charter school, the number of students who reside within the attendance area of the school corporation who are currently included in the ADM of the charter school.

STEP TWO: Determine the sum of

(A) the current ADM count of the school corporation; plus

(B) the total number of students who reside within the attendance area of the school corporation who are currently included in the ADM of the charter school.

STEP THREE: Divide the STEP ONE result by the STEP TWO result.

STEP FOUR: Multiply the STEP THREE result by the amount collected by the county auditor during the most recent installment period.

E. Modifications to Ballot Question

Sections 32 & 37 amend Ind. Code §§ 20-46-1-10 and 20-46-9-9, respectively, to modify the form of the ballot question to be used for the referendum. These changes are meant to reflect the participation of charter schools in a referendum.

For both an operating and safety referendum, the form question reads as follows:

"Shall the school corporation increase property taxes paid to schools by homeowners and businesses for _____ (insert number of years) years immediately following the holding of the referendum for the purpose of funding _____ (insert short description of purposes)? If this public question is approved by the voters, the average property tax paid to schools per year on a residence would increase by _____% (insert the estimated average percentage of property tax increase paid to schools on a residence within the school corporation as determined under subsection (b)) and the average property tax paid to schools per year on a business property would increase by _____% (insert the estimated average percentage of property tax increase paid to schools on a business property within the school corporation as determined under subsection (c)). The most recent property tax referendum proposed by the school corporation was held in _____ (insert year) and _____ (insert whether the measure passed or failed).".

Sections 32 & 37 do not prescribe a different form question when a charter school does not participate in a referendum. Therefore, the form question above must be used whether or not a charter school is participating. Also, although Sections 31 & 36 of SEA 391 amend Ind. Code §§ 20-46-1-8.5 and 20-46-9-7 to provide for the participation of charter schools for a referendum to extend an existing referendum tax levy, SEA 391 does not modify the form question prescribed in Ind. Code §§ 20-46-1-10.1 or 20-46-9-10 specific to that referendum.

F. Distribution by the County Auditor

Ind. Code § 20-24-7-6.2, added by Section 5 of SEA 391, provides that the county auditor of the county where the school corporation is located shall distribute money received as part of the levy resulting from a referendum to a participating charter school.

G. Obligations and Prohibitions on a Participating Charter School

Under Ind. Code § 20-46-9-22(e), added by Section 38 of SEA 391, a charter school receiving a distribution from a school safety referendum tax levy may only use the revenue for purposes described in Ind. Code § 20-40-20-6(a).

Under Ind. Code § 20-24-7-6.2(d), added by Section 5 of SEA 391, a charter school that may receive money from a referendum tax levy may not promote a position on a referendum. In addition, Ind. Code § 20-24-7-6.2(e) states that if a charter school receives a distribution from a referendum tax levy, the charter school must post the following on its website:

- (1) The specific purposes for which the revenue distributed from the tax levy will be used.
- (2) An estimate of the annual dollar amounts that will be expended for each purpose.

II. Operations Fund Levy Distributions to Charter Schools

The following provisions pertain to distributions of revenue from an operations fund levy for a school corporation located in any of the following counties: Lake, Marion, St. Joseph, or Vanderburgh. However, this does not apply to a levy of a school corporation designated as a distressed political subdivision under Ind. Code § 6-1.1-20.3. These provisions are effective July 1, 2024, and are intended to first apply for taxes payable in 2025.

Section 153 of HEA 1001 adds Ind. Code § 20-24-7-6.1 as a new section. This section applies to revenue collected after June 30, 2024, from a tax levy imposed for the operations fund. Beginning in the calendar year 2025, the county auditor must distribute operations fund tax levy revenue to an eligible charter school. The distribution must be made at the same time that tax levy revenue is distributed to school corporations. Like with the distribution described in Section I of this memo, above, “charter school” for purposes of this distribution excludes a virtual charter school or an adult high school.

Section 214 of HEA 1001 adds Ind. Code § 20-46-8-11.2 as a new section. This section reiterates the requirement of the county auditor to distribute revenue to charter schools as described in Ind. Code § 20-24-7-6.1, above. This section also provides for the following:

- (1) Not later than thirty (30) days before the county auditor distributes operations fund levy revenue, the Department of Education, in consultation with the Department of Local Government Finance, must determine the corresponding percentages of revenue received from the operations fund levy to be distributed to the school corporation and to charter schools. The formula is as follows:

STEP ONE: Identify each charter school located in the same county as the school corporation and provides not more than fifty percent (50%) virtual instruction to students.

STEP TWO: For each charter school, determine the number of students with legal settlement in the school corporation, are currently included in the fall ADM of the charter school, and receive not more than fifty percent (50%) virtual instruction.

STEP THREE: Add the fall ADM count for the school corporation, excluding students receiving more than fifty percent (50%) virtual instruction, to the aggregate of the STEP TWO results for all applicable charter schools.

STEP FOUR: For each charter school, divide the STEP TWO result for that charter school by the STEP THREE result. Express as a percentage.

STEP FIVE: Sum all of the amounts under STEP FOUR and subtract the result from one hundred percent (100%).

(2) Immediately after completing the above calculation, the Department of Education shall provide to the county auditor, in the form prescribed by the county auditor, the corresponding percentage under STEP FOUR or STEP FIVE above for each charter school or school corporation (as applicable).

(3) The county auditor shall distribute to the school corporation and each applicable charter school the amount determined by the following formula:

STEP ONE: Determine the “base property tax levy amount” for each school corporation. This amount is the average of the school corporation’s operations fund tax levy imposed under Ind. Code 20-46-8 in 2021, 2022, and 2023.

STEP TWO: Determine the “incremental property tax levy amount” for each school corporation. This amount is the school corporation’s operations fund levy for the current calendar year minus the base property tax levy amount.

STEP THREE: For each school corporation and charter school, multiply the incremental property tax levy amount by

(i) the charter school’s percentage determined under STEP FOUR of Ind. Code § 20-46-8-11.2(d), above;

(ii) the school corporation’s percentage determined under STEP FIVE of Ind. Code § 20-46-8-11.2(d), above.

(4) Before October 1, starting in 2024, the Department of Education shall provide to each school corporation and each eligible charter school an estimate of the amount of property tax revenue they are expected to receive for the ensuing calendar year.

(5) Before April 1, starting in 2025, the county auditor shall provide each school corporation and each eligible charter school with the actual amount of property tax revenue they are expected to receive for that calendar year.

In order to receive a distribution, the governing body of an eligible charter school shall, starting in 2024, adopt a budget for the school year. The budget must be adopted before November 1 each year. Not later than ten (10) days before adoption, the budget must be fixed and presented

to the charter board in a public meeting in the county in which the charter school is incorporated. The adopted budget must be submitted to

- (1) the charter authorizer, for review; and
- (2) the Department of Local Government Finance, for posting on Gateway under Ind. Code § 6-1.1-17-3.

III. Charter School Operations Fund, Capital Projects Plans, and Bus Replacement Plans

Sections 185 & 186 of HEA 1001 amend Ind. Code §§ 20-40-18-1 & 20-40-18-2, respectively, to provide that the governing body of a charter school must establish an operations fund if the charter school is receiving a distribution of a school corporation's operations fund levy. The charter school's operations fund is to be used after December 31, 2024.

Section 187 of HEA 1001 adds Ind. Code § 20-40-18-10.5 as a new section to provides that a charter school may use its operations fund only for the following purposes:

- (1) Carry out a capital projects plan.
- (2) Pay transportation costs.
- (3) Carry out a school bus replacement plan.
- (4) Pay expenses that are allocated to overhead and operational expenses.
- (5) Establish, maintain, and equip a public playground.

Ind. Code § 20-40-18-10.5 lists the requirements for a capital projects plan and school bus replacement plan. Among other things, these plans must be prescribed by the Department. The charter school must also hold a public hearing on the proposed plan and make the proposed plan available to the public prior to the hearing. After adopting the plan, the charter school must submit the plan to Gateway. The Department plans to issue a memorandum in 2024 to further elaborate on these requirements. This section also places conditions on using the fund for transportation costs.

These provisions are effective July 1, 2024.

IV. Protected Tax Waivers

Section 39 of HEA 1454 amends Ind. Code § 6-1.1-20.6-9.9. This amendment makes changes to the waiver of implementation of protected taxes ("waiver") by certain school corporations for circuit breaker credits allocated after 2023. These changes are effective July 1, 2023.

A school corporation will not be eligible for a waiver under Ind. Code § 6-1.1-20.6-9.9 if it issues a bond or enters into a lease after July 1, 2023, for which it is imposing or will impose a debt service levy. This will not apply to a bond issuance or a lease for purposes of refinancing or renewing a prior bond or lease obligation before January 1, 2024, that lowers the interest rate on the obligation. This will also not apply to indebtedness approved in a local public question or referendum.

Therefore, starting in pay-2024, a school corporation will not be eligible for a waiver if it is using or will use a debt service levy to pay for a bond or lease obligation made after July 1, 2023, except when the obligation refinances or renews a prior obligation *and* lowers the prior obligation's interest rate. The school corporation must still show that the circuit breaker credits attributed to the operations fund (weighted by the proportion of referendum debt to the total debt service levy) is at least 10% of the operations fund levy.

Section 39 of HEA 1454 also extends the ability of school corporations to obtain a waiver through 2026.

V. School Corporation Levy Limitations

A. School Corporation Maximum Levy Growth Quotient

Section 5 of HEA 1499 amends Ind. Code § 6-1.1-18.5-2 to add a new subsection (f), effective upon passage. This subsection places an additional limit on the maximum levy growth quotient ("MLGQ") for school corporations for Pay-2024 and Pay-2025. For these years, the MLGQ is calculated using the following formula:

STEP ONE: Determine the MLGQ under Ind. Code § 6-1.1-18.5-2(c), as if Ind. Code § 6-1.1-18.5-2(f) was not in effect.

STEP TWO: Subtract one (1) from the STEP ONE result.

STEP THREE: Multiply the STEP TWO result by eight-tenths (0.8).

STEP FOUR: Add one (1) to the STEP THREE result.

STEP FIVE: Determine the lesser of:
(A) the STEP FOUR result; or
(B) one and four-hundredths (1.04).

In other words, the MLGQ for pay-2024 and pay-2025 may not exceed the lesser of 1.04 or 80% of the MLGQ as normally calculated under Ind. Code § 6-1.1-18.5-2.

B. School Corporation Operating & Safety Referendum Levy Limitations

Section 4 of HEA 1499 adds Ind. Code § 6-1.1-17-3.1 as a new section, effective upon passage. This new section applies to an operating referendum tax levy (under Ind. Code § 20-46-1) approved by the voters before January 1, 2023, and imposed for taxes first due and payable in 2024. It does not apply to an operating referendum tax levy approved in a referendum held in 2023 and that is imposed for taxes first due and payable in 2024. This section does not apply to any other tax year.

Notwithstanding any increase in assessed value on property in the school corporation from the previous assessment date, this new section provides that an operating referendum tax levy may

not increase by more than one and three-hundredths (1.03) of the maximum operating referendum tax levied by the school corporation in 2023. The tax rate for an operating referendum tax levy shall be decreased, if necessary, to comply with this limitation.

In other words, regardless of the rate adopted by a school corporation for an operating referendum fund (DLGF Fund Number 0022), and regardless of the net assessed value of property in the school corporation, for pay-2024 the levy for the fund will not be allowed to be more than 103% of the levy for the fund for the immediately prior year. This limitation will not apply to an operating referendum approved by voters in 2023.

VI. Extensions of School Referendum Levies

Sections 154 and 156 of HEA 1454 amend Ind. Code § 20-46-1-10.1 and Ind. Code § 20-46-9-10, respectively, with respect to a voter referendum to extend a school corporation's operating or safety referendum levy.

First, the form of the question is revised to state the estimated increase of the average property tax paid to the school corporation on a homestead and business property. Currently, the form of the question requires stating the estimated increase of the average property tax paid on the same types of property when the referendum first passed.

Second, the calculation of the estimated average tax impact on homestead and business properties under Ind. Code § 20-46-1-10.1(d) and (e), respectively, is modified. Rather than using the average assessed value and the overall average tax rate of the first year in which the referendum levy was imposed, the respective value and rate for the current year (that is, the year in which the certification is made) must be used.

These changes are effective July 1, 2023.

VII. Unreimbursed Textbook Funding

Section 184 of HEA 1001, effective July 1, 2023, amends Ind. Code § 20-40-9-7 to remove provisions allowing the school corporation debt service fund to be used for the payment of unreimbursed textbooks.

Therefore, starting with budgets for pay-2024, a debt service levy under Ind. Code § 20-46-7 for the repayment of unreimbursed textbooks will no longer be allowed.

Contact Information

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