



TABOR—School Ballot Issue Elections

Budget, Bond, Transportation, Technology and Kindergarten

The dates on which school districts can submit tax and revenue measures to the voters is limited by the state constitution to the first Tuesday in November in odd-numbered years (which is the district's biennial election date) and the state general election, which is the first Tuesday after the first Monday in November in even-numbered years.

The district must follow the election requirements of the Taxpayer's Bill of Rights ("TABOR") in the state constitution when conducting a ballot issue election. *Colo. Const. Art. X, § 20(3)*.

The purpose of this memorandum is to present an overview of the election law and the state constitution as it applies to school ballot issue elections. The memorandum highlights major points to consider in preparing for the election, but it is not an extensive discussion of all the legal issues and questions which may arise. School districts should consult legal counsel regarding specific questions regarding the matters addressed by this memorandum.

Overview of the law on budget elections

While the primary focus of this discussion is school budget elections, the procedures apply to any "ballot issue" that the district will place on the ballot, as that term is defined in the constitution and state law. Ballot issues are financial matters, such as

a bond issue, a transportation mill levy or a request to raise up to 10 mills for three years for technology. State law also allows school districts to submit a ballot issue to raise additional local property tax revenues to provide funding for excess full-day kindergarten program costs and to meet the initial capital construction needs associated with establishing a full-day kindergarten program.

In the 2008 legislative session, the General Assembly enacted the Build Excellent Schools Today Act (BEST), which provides a new funding structure for school capital construction projects. As a result, several sources of revenue available for school capital construction are now consolidated into one account and the Colorado Department of Education is authorized to enter into lease purchase programs or issue grants from the fund with school districts or BOCES. Details about BEST are beyond the scope of this memorandum. However, school districts that go to their voters to seek necessary matching funds to participate in BEST will conduct their elections in accordance with the procedures outlined below.

Districts are advised to consult legal counsel when preparing a question for the ballot because of the complexities of TABOR and the potential for litigation if the question is not worded properly.

Colorado's Public School Finance Act of 1994 ("finance act") allows school districts that desire to raise and expend local property tax revenues in excess of the district's total program funding to seek authorization from the voters for additional local revenues. *Colo. Rev. Stat. § 22-54-108*. This type of election is commonly called a "budget" or "mill levy" election. A school budget election may be called by a resolution of the board of education or upon the submittal of a valid petition signed by at least 5% of the eligible electors in the district. *Colo. Rev. Stat. § 22-54-108(1)-(2)*.

When the board of education determines that it is in the best interest of the district to seek authorization for additional local revenues, the board will adopt a resolution calling for an election for this purpose. *Colo. Rev. Stat. § 22-54-108(1)*. A sample resolution to call a budget election (Authorization for additional local revenues) is attached as Appendix A.

Within ten days after the election, the board of education or its designee must provide to the Public School Finance Unit of the Colorado Department of Education the following: 1) a copy of the official ballot question language as certified by the county clerk or a copy of the official ballot marked with the word "sample;" and 2) the number of votes cast for the question and the number of votes cast against it. *1 CCR 301-39*.

Additional local revenues authorized at an election are the sole responsibility of the school district and are not considered when establishing the equalization program funding under the finance act.

In 2009, the General Assembly increased the total amount of additional local property tax revenues that may be received pursuant to a budget election, including specific dollar amounts approved at previous budget elections. That amount shall not exceed, under any circumstances, 25% of the district's total program funding or \$200,000, whichever is greater. *Colo. Rev. Stat. § 22-54-108(3)(b)(II)(A)*.

Once a district reaches the limitation, the district is not authorized to hold another budget election. *Colo. Rev. Stat. § 22-54-108(3)(d)(II)*.

Certain districts are eligible to exceed this limitation in an amount equal to the maximum amount of property tax revenue that the district could have generated for the 2001-02 budget year if the district received voter approval for a supplemental cost of living increase in November 2001. *Colo. Rev. Stat. § 22-54-108(3)(b)(III)*.

Specific ownership tax revenue paid to the district during the prior budget year is no longer applied towards this limitation. *Colo. Rev. Stat. § 22-54-108(3)(d)(II.5)*.

Other ballot issue elections

School districts may submit to the eligible electors the question of contracting a bonded indebtedness for constructing buildings, acquiring land, re-modeling, improving and

repairing buildings or equipping or furnishing school buildings or school grounds. *Colo. Rev. Stat. § 22-42-101 et seq.*

A bond election may be held on the general election day in even-numbered years or on the first Tuesday in November of each odd-numbered year. *Colo. Rev. Stat. § 22-42-102(2)(c)*.

School districts submitting a bond question to their voters will be working closely with bond counsel to assure that the district complies with all applicable election procedures.

The Charter School Capital Facilities Financing Act was enacted in 2002. *Colo. Rev. Stat. § 22-30.5-404 et seq.* This Act provides that a charter school that has capital construction needs may seek to obtain money to fund those needs by asking the school district to be included in its bond question or to submit a ballot question on its own for approval of a special mill levy pursuant to § 22-30.5-405.

While the details of this law are beyond the scope of this memorandum, it is important to consider that charter schools may have an opportunity to participate in the district's bond proposal as it is being formulated and when it is submitted to voters. *Colo. Rev. Stat. § 22-30.5-404(1)(b)*. This law was amended in 2009 to assure that charter schools are represented on the school district's long-range planning committee and any committee established by the school district to assess and prioritize the district's capital construction needs.

School districts are also authorized under state law to submit a transportation mill levy question to the voters for the purpose of paying excess transportation costs. *Colo. Rev. Stat. § 22-40-102(1.7)(a)*.

There is no longer a requirement in state law that school districts must get voter approval before imposing a transportation fee to cover the excess costs of transportation. The board of education may impose a transportation fee by resolution in accordance with the procedures set out in statute. *Colo. Rev. Stat. § 22-32-113(5)*.

School districts are also authorized to ask voters to approve up to 10 mills for three years to finance technology or other capital projects. *Colo. Rev. Stat. § 22-40-102(1.5)* and § 22-45-103(1)(d).

The board of education of any growth district may submit a question to voters for additional property tax revenues to acquire or purchase property, remodel or construct school buildings, and various other capital projects. *Colo. Rev. Stat. § 22-40-110*. No more than five mills (or the number of mills allowed when using the computation in statute) may be authorized by the voters under this provision. A growth district is one whose student population increases by more than one percent or by 50 students, whichever is less. *Colo. Rev. Stat. § 22-2-125(1)(b)*.

A school district is allowed to submit a question to voters to raise and expend local property tax revenues to provide funding for excess full-day kindergarten program costs for the current budget year and each

budget year thereafter. *Colo. Rev. Stat. § 22-54-108.5*. The ballot issue may also include a question of whether to impose an additional mill levy of a stated amount and limited duration to meet the initial capital construction needs of the district associated with establishing full-day kindergarten. The additional local property tax revenues are in addition to any property tax revenues authorized after a budget election.

The term “excess full-day kindergarten program costs” means the costs that exceed fifty percent of the district’s per pupil revenues for the budget year, multiplied by the number of pupils enrolled or expected to enroll in the district’s full-day kindergarten program. *Colo. Rev. Stat. § 22-54-108.5(1)(d)*. If a district obtains local property tax funding for kindergarten, it will not be eligible to receive kindergarten funding through the Colorado Preschool Program.

A district that obtains voter approval to fund full-day kindergarten must use evidence-based research demonstrating the types of programs and methods appropriate for a full-day kindergarten program. *Colo. Rev. Stat. § 22-54-108.5(2)(a)*. The district cannot require parents to enroll their child in a full-day kindergarten program. *Colo. Rev. Stat. § 22-54-108.5(2)(b)*. State law allows a district to charge tuition to a non-resident student for the excess full-day kindergarten program costs. Tuition must be based on the actual cost of providing the program. *Colo. Rev. Stat. § 22-54-108.5(3)*.

TABOR implications

An election to consider a state or

local matter arising under TABOR is referred to in both the constitution and in state law as a “ballot issue” election. *Colo. Const. Art. X, § 20(2)(a)*. Ballot issues under TABOR include approval of a tax rate increase, a mill levy above that for the prior year, creation of a multiple-fiscal year debt and a “weakening” of the spending limitation, among other things. Any school election on the financial matters discussed above would be considered a “local ballot issue.”

Having a local ballot issue election subject to TABOR triggers very specific procedures for providing written notice to electors and imposes certain requirements on the wording of the ballot title. These requirements are discussed in more detail below.

Wording of the ballot

The wording of the ballot for a ballot issue is not specified in state law, which means districts are on their own in drafting the language for the ballot so that it will comply with TABOR. Districts are advised to begin discussions now with their own legal counsel about the TABOR requirements for wording of the ballot.

TABOR requires that ballot titles for tax increases shall begin,

“SHALL (DISTRICT) TAXES BE INCREASED (first, or if phased in, final, full fiscal year dollar increase) ANNUALLY... ?” or “SHALL (DISTRICT) DEBT BE INCREASED (principal amount), WITH A REPAYMENT COST OF (maximum total district cost),....?” *Colo. Const. Art. X, § 20(3)(c)*.

It is extremely important that the estimates of the amount to be raised by the tax increase stated in the ballot title be calculated carefully because if the tax increase exceeds the estimate for the fiscal year, the tax increase will have to be reduced proportionately and the excess revenue refunded in the next fiscal year. *Colo. Const. Art. X, § 20(3)(d)*.

Once the wording of the ballot is finalized and approved by the board of education, it must be certified to the county clerk no later than 60 days before the election. *Colo. Rev. Stat. § 1-5-203(3)*.

Notice of the election

TABOR requires the following:

At least 30 days before a ballot issue election districts shall mail at the least cost, and as a package where districts with ballot issues overlap, a titled notice or set of notices addressed to “All Registered Voters” at each address of one or more active registered electors. *Colo. Const. Art. X, § 20(3)(b)*.

Districts may coordinate the mailing required by this paragraph with the distribution of the ballot information booklet in order to save mailing costs. *Colo. Const. Art. X, § 20(3)(b)*. It is the responsibility of the county clerk and recorder to mail the required election notice package on behalf of all political subdivisions within the clerk’s jurisdiction that are conducting ballot issue elections. Districts are advised to work with the county clerk to determine the specific format for this notice.

TABOR provides that the notice shall

include only:

(i) The election date, hours, ballot title, text and local election office address and telephone number.

(ii) For district tax or bonded debt increases, the estimated or actual total of district fiscal year spending for the current year and each of the past four years and the overall percentage and dollar change.

(iii) For the first full fiscal year of each proposed district tax increase, district estimates of the maximum dollar amount of each increase and of district's fiscal year spending without the increase.

(iv) For proposed district bonded debt, its principal amount and maximum annual and total district repayment cost, and the principal balance of total current district bonded debt and its maximum annual and remaining total district repayment cost.

(v) Two summaries up to five hundred words each, one for and one against the proposal, of written comments filed with the election officer by 45 days before the election. No summary shall mention names of persons or private groups, nor any endorsements of or resolutions against the proposal. Petition representatives following these rules shall write this summary for their petition. The election officer shall maintain and accurately summarize all other relevant written comments. *Colo. Const. Art. X, § 20(3)(b)*.

The school district must prepare the full text for the TABOR notice and deliver it to the county clerk for

mailing (*Colo. Rev. Stat. § 1-7-904*) in a package with notices from other entities with the same electors that have tax and revenue issues on the ballot. This information must be delivered at least 42 days prior to the election. *Colo. Rev. Stat. § 1-7-904*.

The requirements for the content of the TABOR notice have been codified at *Colo. Rev. Stat. § 1-7-901 et seq.* The board of education, or designee, is responsible for providing to its designated election official the fiscal information that must be included in the ballot issue notice. *Colo. Rev. Stat. § 1-7-902*.

In addition to the TABOR notice, the district must also include notice of the ballot issue when it publishes any other election notice. In many jurisdictions, the election notice provided by the county clerk is sufficient to cover the school district's election notice responsibilities. *Colo. Rev. Stat. § 1-5-205*.

Summaries for and against the ballot issue

As noted above, the election notice required by TABOR must contain two summaries, one for and one against the ballot issue, of written comments filed with the (school) election officer 45 days before the election. The summary cannot mention names of persons, or private groups, nor include any endorsements of, or resolutions against the proposal. Since the 45th day before any ballot issue election is always a Saturday, all comments have to be filed by the end of the business day on the Friday before the 45th day before the election. *Colo. Rev. Stat. § 1-7-901(4)*.

Because in most cases, a ballot issue will be referred to the voters by the board of education and not initiated by petition, it is unlikely that there will be "petition representatives" who will summarize their petition. Consequently, it will be the responsibility of the school's designated election official to summarize, in 500 words each, both the "pro and con" written comments submitted by the required deadline. *Colo. Rev. Stat. § 1-7-903*.

State law delineates which comments the designated election official will consider when preparing the pro/con statement. *Colo. Rev. Stat. § 1-7-901*. These requirements are as follows:

1. All written comments received will be kept on file with the designated election official in the school district. However, only those comments that are filed by persons eligible to vote in the school district's election must be summarized in the ballot issue notice. The filed comments shall be retained as election records.

2. To be summarized in the notice, the comments shall address a specific ballot issue and shall include a signature and an address where the signer is registered to vote and shall be filed with the designated election official for the school district, and not the county clerk, unless the issue is a county issue.

3. All comments shall be filed by the end of the business day on the Friday before the 45th day before the election.

4. If the school ballot issue is the result of an initiative petition, rather than board resolution, the petition

representatives are solely responsible for summarizing all comments filed in favor of the ballot issue. The designated election official is to summarize all comments filed in opposition. *Colo. Rev. Stat. § 1-7-903(2)*.

5. Petition representative must submit the summary in typewritten form at least 43 days before the election; if they fail to meet the statutory deadline, the summary on the notice will state: "No summary was filed by the statutory deadline." *Colo. Rev. Stat. § 1-7-903(3)*.

6. If no comments are filed in opposition to or in support of a ballot issue, the designated election official shall not prepare any summaries. A statement will be prepared for the notice that reads: "No comments were filed by the constitutional deadline." *Colo. Rev. Stat. § 1-7-903(4)*.

There is no requirement that the district take any special steps to solicit written comments for the preparation of the summary on either side. However, alerting the public to the fact that they may comment may be prudent from a public relations standpoint.

Disclosure of financial information

Any district submitting a ballot issue that will create a debt or financial obligation of the district must post notice of specific financial information on the district's web site no later than 20 days before the election. *Colo. Rev. Stat. § 1-7-908*. If the district does not have a web site, the information is to be posted in the district's administrative office.

The notice must include the following:

- a. the district's ending general fund balance for the last four fiscal years and projected ending general fund balance for the current fiscal year; and
- b. a statement of the total revenues in and expenditures from the district's general fund for the last four fiscal years and projected total revenues in and expenditures from the general fund for the current fiscal year; and
- c. the amount of debt or other obligations incurred by the district for each of the last four fiscal years for cash flow purposes that have a term of not more than one year and the amount of any such financial

obligation projected for the current fiscal year; and

d. a statement as to whether the district's emergency reserve required by TABOR has been fully funded for the current fiscal year and each of the last four fiscal years and an identification of the funds or accounts where the reserve is held, and if the reserve has not been fully funded, a statement of the reasons why; and

e. the location at which a person may review the district's audits for the last four fiscal years, any management letters and the district's budget for the current fiscal year.

An election may be contested if this notice is not provided, or if the information provided contains any material misstatements. Anyone wishing to contest the election on this basis will have to file a written statement of intent to contest the election results with the district court within 10 days after the official survey of returns has been filed with the designated election official. *Colo. Rev. Stat. § 1-11-213*.

Appendix A—CASB Sample Resolution

Authorization for additional local revenues

WHEREAS, the Board of Education of the _____ School District is of the opinion that revenues in excess of those which are determined under the provisions of Colorado's Public School Finance Act are necessary to provide for the needs of the District; and

WHEREAS, pursuant to *Colo. Rev. Stat. § 22-54-108*, the Board of Education may submit directly to the registered electors of the _____ School District, the question of whether the Board of Education of _____ School District should be authorized to raise and expend additional local property tax revenues, thereby authorizing an additional levy for the district's general fund; and

WHEREAS, the Board of Education of the _____ School District is of the opinion that it is in the best interest of the School District to submit the question of authorizing an additional levy for the general fund to the registered voters of the District.

THEREFORE, BE IT RESOLVED BY THE BOARD OF EDUCATION OF THE _____ SCHOOL DISTRICT AS FOLLOWS:

1. That on Tuesday, November 1, 2011, in conjunction with the general election, the _____ School District will submit to the registered electors of this district, the question of whether the District may raise and expend additional property tax revenues.
2. That at such election, the title and text of the question appearing on the ballot shall be as follows:
[INSERT TEXT]
3. That the Secretary of the Board of Education is designated as the Designated Election Official for the District to have primary responsibility for the conduct of election procedures on behalf of the District.
4. That the officers and employees of the District are hereby authorized and directed to take all action necessary as appropriate to effectuate the provisions of this resolution in accordance with Colorado law.
5. [Optional] That because the question of authorization of additional local revenues is a matter of official concern to the _____ School District, the Board of Education authorizes an expenditure of public moneys in an amount not to exceed _____ to prepare and disseminate a factual summary on the district's request to seek additional local property tax revenues which shall include arguments both for and against the proposal in accordance with state law.