

# School Bonds and Excess Levies

West Virginia Association of School Business Officials

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## Overview

- Constitutional Framework
- Timeline for Board of Education Bond and Special Levy Elections
- Timeline for Board to Impose Special Property Tax Levy
- Procedures and Legal Requirements Following Successful Bond Election
- Bond Requirements
- General Considerations



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# Constitutional Framework

- Overall Concern in this Area:
  - Inability of the State and Political Subdivisions to Incur an Unconstitutional “Debt” under Article X, Section 4 of W. Va. Constitution
  - Generally only 3 methods of avoiding unconstitutional debt:
    - Revenue Bonds
    - Annual appropriation lease arrangements
    - Levy and Bond Elections



## 3 Methods to Avoid Unconstitutional Debt

- Revenue Bonds: revenue stream pledged to repay obligation
- Annual Appropriation Leases: leases must be subject to annual appropriation and right to cancel on annual basis
- Elections: voters vote to impose special property tax levy and potentially also issue Bonds repayable from such levy

## Constitutional Framework

- W. Va. Constitution Article X, Section 1 limits property tax rates based on location and use of property
- Four classes of property under Article X, Section 1 and W. Va. Code § 11-8-5
  - Class I: Intangible personal property and certain personal property employed exclusively in agriculture. [No property is currently taxed in this classification.]
  - Class II: Owner-occupied residential property used exclusively for residential purposes and all farm land used for agricultural purposes by its owner or bona fide tenant.
  - Class III: All real and personal property situated outside a municipality that is not taxed in Class I or Class II.
  - Class IV: All property situated inside a municipality that is not taxed in Class I or Class II.



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Know-How



Results

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## Maximum Property Tax Regular Levy Rates

- The regular rates of levy may not exceed the following amounts (W. Va. Code § 11-8-6) (Cents per \$100.00 of valuation)

Taxing Authority	Class I	Class II	Class III	Class IV
<b>State:</b>	0.25	0.50	1.00	1.00
<b>County:</b>	14.30	28.60	57.20	57.20
<b>Schools:</b>	22.95	45.90	91.80	91.80
<b>Municipal:</b>	12.50	25.00		50.00
<b>Total</b>	50.00	100.00	150.00	200.00



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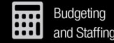


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## Historical Limits on Special Levies

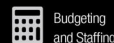
- General rule under Article X, Section 1
  - 60 percent vote of qualified voters required to exceed regular levies
  - Special levies limited to 3 years
  - No more than a 50% increase over maximum permitted rates



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## Historical Limits on School District Debt

- Article X, Section 8 limited school district debt to 3% of the value of the taxable property located in the school district
  - Special property tax levy must be imposed for the repayment of such debt
  - Bonds may not exceed repayment term of 34 years
  - 60% vote of qualified voters required



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## School Levy and Bond Amendment

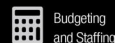
- Article X, Section 10 (passed 1957, amended in 1982) liberalized school district financing limitations
  - For special levies:
    - Increased permitted term of levy from 3 to 5 years
    - Raised limit above otherwise permitted maximum levy rates from 50% to 100%
    - Lowered required voter approval from 60% to 50%



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## School Levy and Bond Amendment

- Article X, Section 10 (passed 1957, amended in 1982) liberalized school district financing limitations
  - For school bonds:
    - Limit of permitted debt raised to 5% of taxable property value
    - Bond levy rates can exceed maximum levy rates by any amount necessary to repay debt if required ratio among property classes is maintained
    - Lowered required voter approval from 60% to 50%



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## Bond and Special Levy Election Timeline



- Careful planning is extremely important in any special levy election or bond election
- Failure to meet deadlines can result in failed elections or post-election challenges
- The following timeline includes both legal requirements and best practices

## Bond and Special Levy Election Timeline

### ➤ Pre-election activities

- Decide date of election (special or regular)
- Determine amount of money needed and purposes for which money is needed
- Provide information to attorney preparing official election order.

\*Recommended to submit order calling election to WV State Auditor's Office and WV Attorney General's Office prior to adoption.

## Bond and Special Levy Election Timeline

### ➤ Pre-election activities

- ❑ For special election, Board notifies chair of each political party executive committee of duties relating to nomination of election officials, including:
  - Number of precincts for which election officials will be appointed (for Board of Education elections, this will be all precincts in the county)
  - Deadline for submitting nominations for one election commissioner and one clerk for per precinct

## Bond and Special Levy Election Timeline

### ➤ 77 or more days prior to election

- ❑ Attorney provides proposed election order to Board of Education to be placed on agenda for Board's meeting

### ➤ 71 or more days prior to election

- ❑ Board of Education must adopt by this date an order set out as required by law for submitting the question to the voters at the regular or special election

## Bond and Special Levy Election Timeline

### ➤ 70 days prior to election

- Copies of order delivered by this date to county clerk, county commission and board of ballot commissioners
- For special election, Board of Education requests County Commission obtain voting places for election
- For special election, the county clerk determines the number of absentee ballots needed and notifies the Board of Education for purposes of ordering ballots
- For special election, party executive committees submit by this date list of nominees for election commissioners, etc.



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## Bond and Special Levy Election Timeline

### ➤ Approximately 69 days prior to election

- For special election, Board of Education contracts for ballot printing with an authorized printer
- Board of Education begins to inform public about upcoming election through news releases and general announcements



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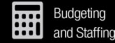
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## Bond and Special Levy Election Timeline

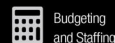
- Approximately 60 days prior to election
- ❑ For special election, Board of Education, in consultation with county clerk, orders all election supplies to be furnished to precincts



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## Bond and Special Levy Election Timeline

- 49 days prior to election
- ❑ For special election, Board of Education appoints election commissioners nominated by political parties including two poll clerks and two election commissioners for each precinct plus alternates
  - The Board of Education fills any positions for which no nominations were filed



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## Bond and Special Levy Election Timeline

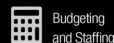
- 26 to 20 days prior to election
  - ❑ Publication of sample ballot as a Class I-0 legal advertisement
- 14 to 8 days prior to election
  - ❑ First publication of notice of election as a Class II-0 legal advertisement



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## Bond and Special Levy Election Timeline

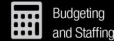
- 7 to 1 days prior to election (last day of newspaper publication before election)
  - ❑ Second publication of notice of election published as a Class II-0 legal advertisement
  - ❑ Issues to be placed on ballot published as Class I-0 legal advertisement (may be of sample ballot)



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## Bond and Special Levy Election Timeline

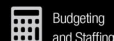
- 5 days after election (not counting Sunday)
- ❑ Canvass of election returns begins
  - For election called by a board of education, a quorum of the county commission is required to conduct the canvass
  - At the conclusion of canvass, results of election are declared



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## Bond and Special Levy Election Timeline

- As soon as practicable after official results of election (bond elections only)
- ❑ Transmit to Attorney General a duly certified copy of all orders, ordinances, proclamations, notices, advertisements, affidavits, resolutions and records of all the proceedings connected with or pertaining to the bond issue



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## General Considerations for Elections

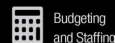
- Timing of elections
  - Special election vs. regular primary or general election
    - Holding an election in conjunction with regular election will save thousands of dollars for the BOE
    - Difficult or impossible for County Clerks to perform necessary duties for special election within 70 days of regular election
    - Taxpayers tend to view wasted tax dollars if special election held shortly before or after a general election



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## General Considerations for Elections

- Timing of elections (continued)
  - Elections scheduled around holidays or in the middle of winter make for difficulty in obtaining election officials, risks of severe weather and other potential problems



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## General Considerations for Elections

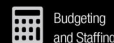
- Advocacy and Use of Public Funds in Support of Bond and Levy Elections
  - BOE and employees cannot use public funds, public time or public materials to advocate passage of Bond/special levy election



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## General Considerations for Elections

- Advocacy and Use of Public Funds in Support of Bond and Levy Elections (continued)
  - BOE may provide, at public expense, strictly factual information about:
    - Amount of funds to be raised
    - Purposes for which those funds will be used
    - Effect of the levies on bonds and property tax rates



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## General Considerations for Elections

- Advocacy and Use of Public Funds in Support of Bond and Levy Elections (continued)
  - Public funds, time, resources may not be used to provide information about a levy or bond which implies or states a position supporting a levy or bond
    - Examples of terms **not** permitted to be used: “improved services”, “better programs”, “more competitive salaries”, “high quality facilities”

## Timeline for Imposing Property Tax Levies



## Timeline for Imposing Property Tax Levies

### ➤ February 5 – February 25

- ❑ WV Municipal Bond Commission provides Board of Education with statement showing levy required to pay scheduled debt service for the Board's outstanding Bonds in next upcoming tax year

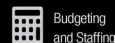


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## Timeline for Imposing Property Tax Levies

### ➤ March 7 – March 27

- ❑ Board of Education meets and prepares statement setting forth:
  - Debt service on Board's outstanding Bonds which will come due in next upcoming tax year; and
  - Proposed property tax levy rates necessary to pay such debt service
- ❑ Board Secretary provides certified copy of statement to State Auditor and publishes statement in local newspaper



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## Timeline for Imposing Property Tax Levies

### ➤ On or before April 1

- ❑ Board Secretary files report with State Auditor of meeting where Board approved statement of debt service and necessary property tax levy
  - Auditor may allow late meeting by May 1 for “good cause”
    - Cause not reasonably foreseeable at time it arose
    - Circumstances which arise that are beyond control of Board
    - Circumstances which, in the discretion of Auditor, sufficiently excuse strict compliance

## Timeline for Imposing Property Tax Levies

### ➤ On or before 3<sup>rd</sup> Thursday in April

- ❑ Board of Education shall hear and consider any objections to debt service estimate and proposed levy and make any corrections required
  - Board then approves the laying of the special property tax levy
  - Board must have prior written approval of State Auditor prior to laying final levy



## Timeline for Imposing Property Tax Levies

- Within 3 Days After Board has Laid the Levies
  - ❑ Board Secretary forwards certified copy of Order laying levies and rate of levy to County Superintendent of Schools and Tax Commissioner

## Timeline for Imposing Property Tax Levies

- Within 3 Days After Board has Distributed Copies of Levy Order
  - ❑ County Superintendent reports levy rates to County Clerk, Assessor, the State Superintendent and Auditor
  - ❑ Property tax levies then entered on land books
  - ❑ Sheriff then proceeds to collect the taxes in same manner as all other property taxes

## Procedures and Legal Requirements Following Successful Bond Election

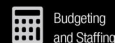
- As soon as practicable after official results of election, Board must transmit to Attorney General duly certified copy of all orders, ordinances, notices, advertisements, affidavits, resolutions and records of all the proceedings connected with or pertaining to the Bond issue



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## Procedures and Legal Requirements Following Successful Bond Election

- Prior to Advertisement of Bond Sale
  - Attorney General shall approve or disapprove the validity of Bond issue
  - AG shall notify Board of Education of approval or disapproval by mail
  - Notify the people of the School District of approval or disapproval by causing notice to be published as a Class II legal ad



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## Procedures and Legal Requirements Following Successful Bond Election

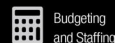
- Within the 10 days following last publication of Attorney General approval, an appeal of AG approval may be filed with WV Supreme Court
- If no appeal within 10 days, or if Court declines to hear appeal, the AG approval shall be final and the Bond issue together with property tax necessary to repay Bonds shall thereafter be **incontestable**



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## Procedures and Legal Requirements Following Successful Bond Election

- Board shall advertise Bonds for sale pursuant to a Notice of Sale
  - Either sealed bids or an electronic bidding procedure (now predominant)
  - Class II legal ad to be published in School District
  - Ad also published in Bond Buyer or comparable publication
  - First publication at least 14 days prior to bid opening



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## Procedures and Legal Requirements Following Successful Bond Election

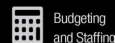
- Board must adopt Resolution authorizing bond issue
  - Establish maximum principal amount and interest rate (within limits of Bond Election Order)
  - Specify that Bonds are payable at WV Municipal Bond Commission offices
  - Provide for property tax levy sufficient to pay debt service on the Bonds



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## Procedures and Legal Requirements Following Successful Bond Election

- Board must adopt Resolution authorizing bond issue (continued)
  - Specify repayment term of Bonds not to exceed 34 years
  - Specify redemption rights (rights to repay prior to maturity)
  - Approve the form of the Bonds
  - Specify whether Board elects to use electronic bidding procedure for sale of the Bonds



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## Bond Requirements and Restrictions

- No BOE may have Bonds outstanding in an amount which exceeds 5% of value of taxable property located in the County
- No Bonds shall be issued by BOE for purpose of providing funds for current expenses of school district (operating expenses)
  - Interest payable on Bonds during construction period of financed projects and for six months thereafter is permitted (capitalized interest)



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## Bond Requirements and Restrictions

- Bond Repayment Structure Requirements
  - Principal to be repaid either annually or semi-annually
  - Principal repayment to begin not more than 3 years after issue date
  - Principal repayment amounts shall be as equal as possible in each year
    - Variance between smallest and largest principal payments may not exceed 5% of the principal amount of the issue



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## Bond Requirements and Restrictions

- Bond Form Requirements
  - AG shall indorse upon each Bond certificate indicating that:
    - Bonds have become incontestable
    - Bonds constitute a binding obligation of the BOE and upon the taxable property within the school district
    - Validity of the Bonds shall not be contested thereafter in any court

## Bond Requirements and Restrictions

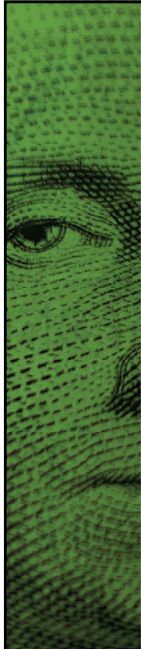
- Bond Form Requirements (continued)
  - A Bond which contains a recital that “It is certified that this bond is authorized by and is issued in conformity with the requirements of the Constitution and Statutes of the State of West Virginia” and also contains the endorsement of the AG as above described shall be **incontestable**

## Bond Requirements and Restrictions

- Bond Form Requirements (continued)
  - Bonds must be issued only in registered form (vs. “bearer” Bonds)
  - Bonds must be signed by Board President and countersigned by the Board Secretary
  - Each Bond must have the BOE seal affixed to the certificate

## Questions?





# THANK YOU!

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