



Operational Referenda Legal Requirements, Timeline and Tips from Bond Counsel

WASBO Spring Conference May 20, 2022

Allison Buchanan

Quarles & Brady LLP

Partner

Allison.Buchanan@quarles.com

414-277-5641



Roadmap

- What is an Operational Referendum?
- Legal Requirements
- Example Ballot Questions
- Limitations on Referenda
- Timeline of Legal Steps and Upcoming Primary and Election Dates
- Referendum Do's and Don'ts
- Tips to Stay on Track

What is an Operational Referendum?

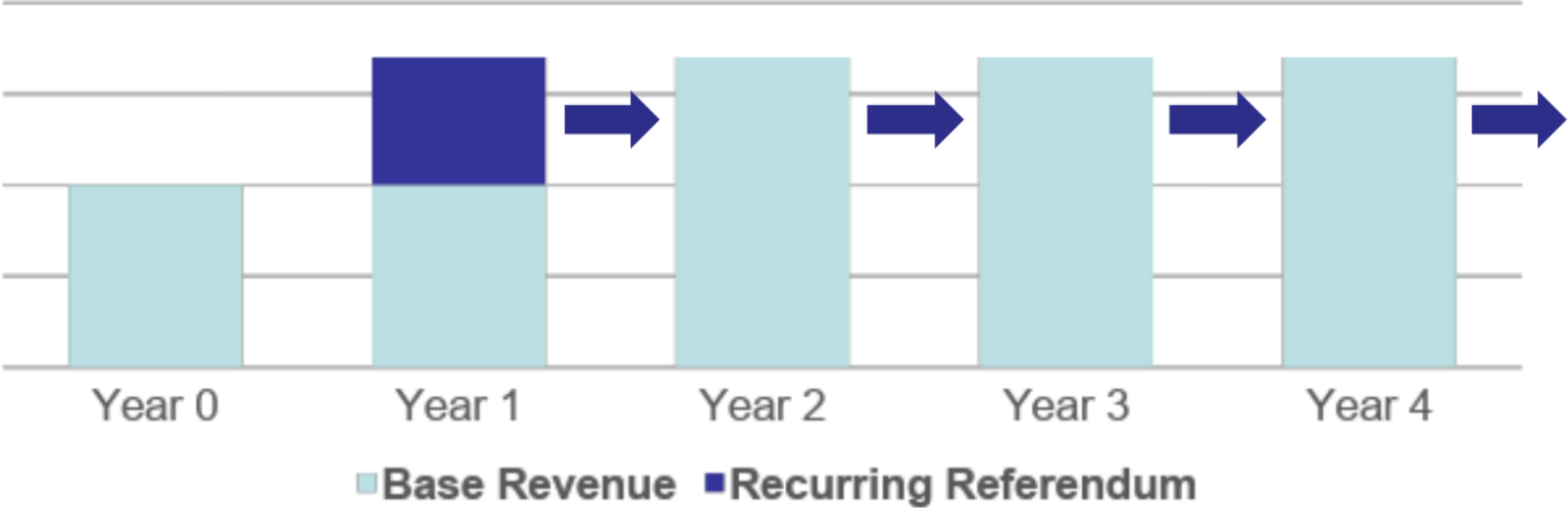
- An operational referendum provides authority for a school district to exceed the revenue limit for operational purposes.
 - Non-Recurring Versus Recurring Operational Referendum
 - A non-recurring operational referendum provides for a temporary increase in the revenue limit.
 - A recurring operational referendum provides for an ongoing or permanent increase in the revenue limit.

A Non-Recurring Operational Referendum



Source: graph is from DPI "The Formal Side of School Finance" Presentation, January 2022

A Recurring Operational Referendum



Source: graph is from DPI "The Formal Side of School Finance" Presentation, January 2022

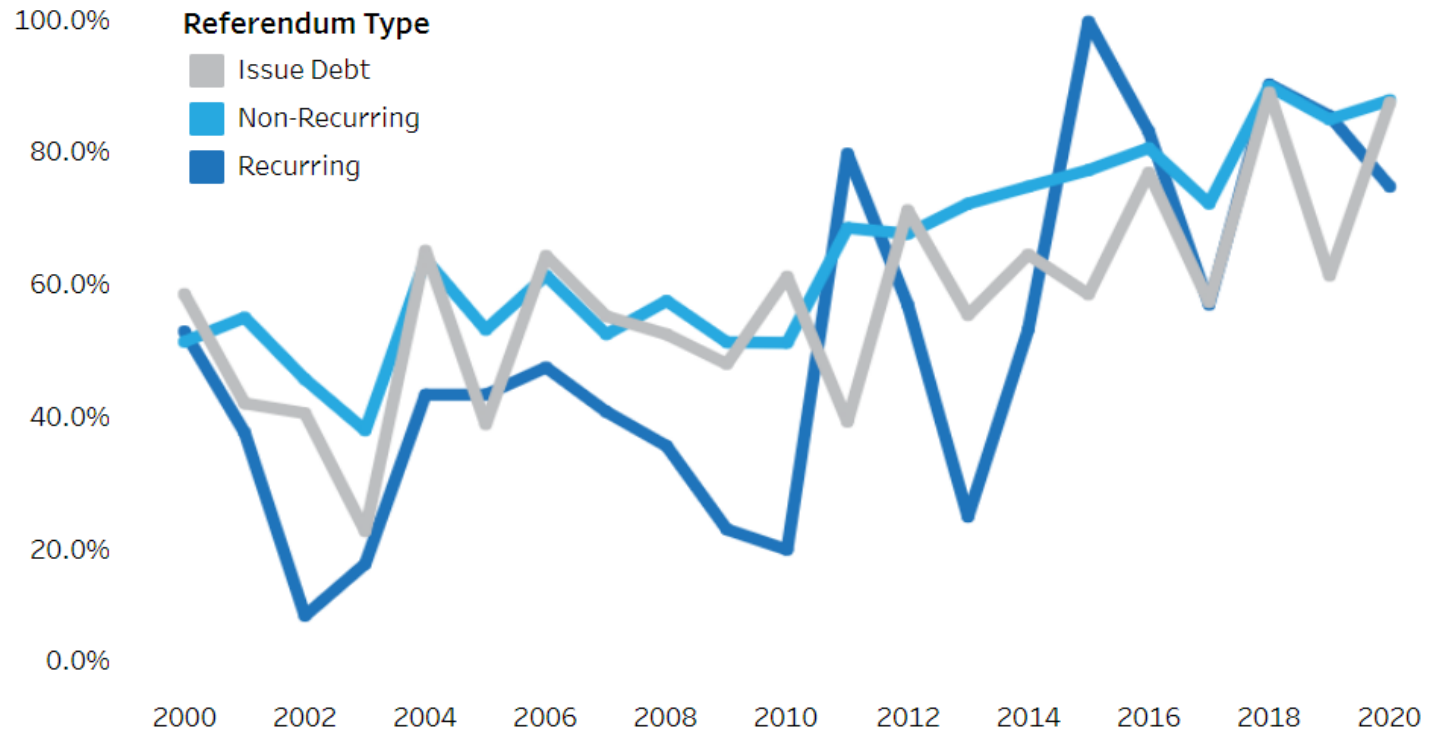
Rates of Passage for Operational Referenda

- Generally speaking, non-recurring operational referenda have higher success rates than recurring operational referenda.
- The Wisconsin Policy Forum did an interesting report on Wisconsin school referendum approval rates in November 2020.
 - The report tracks 20 years of referendum data.

Rates of Passage for Operational Referenda

Figure 1: School Referenda Approval Rate Continues to Rise, Despite Economy

Wisconsin school referenda approval rate by type, 2000 to 2020



Source: "Wisconsin School Referenda Rise Above Economy, Politics", Focus #21, November 2020, Wisconsin Policy Forum

Legal Requirements

- Operational referenda – governed by Wisconsin Statutes, Section 121.91(3)
- A school board must adopt a revenue limit resolution that includes:
 - the amount(s) of the proposed excess revenue to be included in the school district budget; and
 - whether the operational referendum is for a recurring or non-recurring purpose or both (and the amount for each if both a recurring and non-recurring purpose).

Legal Requirements

- The school board shall schedule the referendum to be held at the next regularly scheduled primary or election (as long as it is at least 70 days after the resolution adoption and ballot filing).
- The referendum must be held in compliance with Chapters 5-12 of the Wisconsin Statutes.
- The form of the ballot question shall be whether the revenue limit may be exceeded by a specified amount.

Example Ballot Questions

- Non-Recurring Operational Referendum Example

School District

Question: Shall the _____ School District, Wisconsin be authorized to exceed the revenue limit specified in Section 121.91, Wisconsin Statutes, by \$_____ per year beginning with the 2022-2023 school year and ending with the 2026-2027 school year, for non-recurring purposes consisting of operational and maintenance expenses?

Example Ballot Questions

- Recurring Operational Referendum Example

School District
Question: Shall the _____ School District, Wisconsin be authorized to exceed the revenue limit specified in Section 121.91, Wisconsin Statutes, by \$_____ beginning with the 2022-2023 school year, for recurring purposes consisting of operational and maintenance expenses?

Limitations on Referenda

- 2017 Act 59 added restrictions on school district referenda.
 - Limitations on the number of referenda that can be held by a school district in a calendar year.
 - In addition, a school district also can no longer hold a special election for a referendum (except in a very limited circumstance).

Limitations on Referenda

- "...A school board may proceed under this subdivision and under s. 67.05 (6a) (a) 2. a. no more than 2 times in any calendar year..." (Wisconsin Statutes, Section 121.91(3)(a)1.)
 - No more than two board resolutions to authorize a referendum and no more than two resulting questions per a calendar year.

Possible Referendum Combinations

- Examples of Possible Referendum Combinations in One Calendar Year
 - Two revenue limit resolutions, resulting in two operational referendum questions.
 - Two initial resolutions, resulting in two capital borrowing questions.
 - One initial resolution and one revenue limit resolution, resulting in one capital borrowing question and one operational referendum question.

Reminder about Increases in Base Wages

- If a school board wants to increase the total base wages of its employees in an amount that exceeds the limit provided for under Wisconsin Statutes, Section 111.70(4), the school board must adopt a resolution to that effect and go to referendum in April for a collective bargaining agreement that begins in July of that year.
- The "limit" when there is an increase in the consumer price index change (as we have in current times) -- if total base wages for authorized positions in the proposed collective bargaining agreement exceed the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the consumer price index (CPI) change.
 - **What does this mean?** For collective bargaining agreements beginning on July 1, 2022, an increase in total base wages that exceeds 4.70% (the applicable CPI percentage) must be approved at referendum.

Timeline of Legal Steps

Action	Timing	Notes
Adopt revenue limit & referendum resolutions	At least 70 days prior to the election date	Plan ahead
File ballot with County Clerk(s)	At least 70 days prior to the election date	Make sure the County Clerk(s) receive the ballot to get the question(s) included
Notify DPI	Within 10 days of adoption of the resolutions	
Information campaign	Ongoing through election date	More to come
Publish first notice	On the 4 th Tuesday prior to the election	Type A Notice
Publish second notice	On the day prior to the election	Type B, C & D Notice (Municipal Clerks typically publish the Type E Notice)
Election day	Regularly scheduled primary or election	
Report preliminary results to DPI	Night of election	
Board of canvassers meet	By 9:00 a.m. on the Tuesday after the election date	Meeting must be noticed and open to the public
Report final referendum results	Within 10 days of the referendum being held	Report to DPI upon completion of board of canvassers meeting

Upcoming Primary and Election Dates

Election Dates	70 Day Ballot Filing Deadline
August 9, 2022	May 31, 2022
November 8, 2022	August 30, 2022
February 21, 2023	December 13, 2022
April 4, 2023	January 24, 2023
February 20, 2024	December 12, 2023
April 2, 2024	January 23, 2024
August 13, 2024	June 4, 2024
November 5, 2024	August 27, 2024



Referendum Do's and Don'ts

- Use of District Funds
 - District funds can be used for informational materials.
 - Expenditures may be made for public purposes.
 - Inform voters of the facts so that voters can make an educated vote.
 - Neutral fact sheets are okay.
 - District funds cannot be used for "express advocacy".
 - District funds cannot be used for political/promotional materials.
 - No "express advocacy" – phrases such as "vote for", "elect", "support", "vote against", "defeat", "reject".
 - Avoid "puffery".
 - District computers/technology equipment should not be used for any political/promotional purpose.



Referendum Do's and Don'ts

- Role of School Board Members
 - Board members are not school district employees and may speak freely in favor of or against a referendum as individuals.
 - Board members may individually be involved in referendum committees.
 - Board members should make clear when expressing their viewpoint that they are speaking as an individual and not on behalf of the Board.
- Role of School District Administration and Staff
 - More limited role for school district administration.
 - Can be a resource and provide information and facts.
 - As employees of the district, school district administration and staff cannot engage in political/promotional activities during working hours.
 - District resident staff may be involved in a referendum committee outside of working hours.



Referendum Do's and Don'ts

- Interaction with Referendum Committees
 - Referendum committees are separate and distinct from the school district and school board.
 - Referendum committees must comply with Chapter 11 of the Wisconsin Statutes governing campaign finance, but the school district is not responsible for advising such groups or ensuring compliance.
 - The Wisconsin Ethics Commission can assist referendum committees with questions.
 - The District Clerk serves as the "filing officer" for referendum committees.
 - Registration statements
 - Ongoing disclosure reports
 - Other duties – obtain filing forms and manuals, have a filing system, provide copies of manuals and election laws, determine whether report/statement was timely filed in form required



Tips to Stay on Track

- Plan ahead and do your homework.
- Reach out to your legal counsel and other referendum partners to keep them involved throughout the process.
- Use your timelines.
- Watch for reminders about notice publication dates and other steps.
- Don't hesitate to reach out with questions. You don't work on a referendum every year, but we work on many and want to help!

Questions?

Thank You!