

EFFECTS OF THE REAL PROPERTY TAX CAP ON SCHOOL DISTRICTS

Education Law Alert
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On June 24, 2011, Governor Cuomo signed Chapter 97 of the Laws of 2011, a tax levy law that establishes a real property tax cap for school districts in New York State (other than the “big five” city districts) in relation to budget adoption. Since the law applies to the budget process for the 2012-13 school year and will remain in effect at least through June 15, 2016, districts must begin planning for these changes.

The new law requires a school district budget to be approved by at least 60 percent of the voters at the district’s budget vote in order to exceed the prescribed tax levy limit, but it is the new rules applicable to the adoption of contingency budgets that may present the most serious challenge to school district operations.

Supermajority Voting Requirement for Budget Adoption

The tax levy law sets the criteria for determining whether a school district budget, as presented by the school board, must be adopted by a simple majority of voters during the budget vote, or whether it must be adopted by a supermajority of at least 60 percent of the voters.

A budget that imposes a tax levy increase equal to or less than the applicable tax levy limit only requires a simple majority vote for adoption. However, if a school board presents a budget that requires a tax levy increase exceeding either two percent of the prior year’s tax levy or the rate of inflation, whichever is less (but in no case less than a one percent increase in the prior year’s levy), then the proposed budget must be approved by at least a 60 percent vote. Additionally, the law prescribes statutory language that must be included on the ballot in order to present a budget that requires a vote of at least 60 percent.

The supermajority voting requirement also applies to any separate expenditure propositions submitted to the voters that would have the effect, individually or collectively, of requiring an overall tax levy that exceeds the applicable tax levy limit.

Attorneys

John Alessi
Ryan Everhart
Andrew Freedman
Karl Kristoff
Jeffrey Stone
Jeffrey Swiatek

Practices & Industries

Education



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The law provides the following limited expenditure exceptions from the tax levy limit calculation:

- The tax levy necessary to fund expenditures resulting from court orders or judgments against the school district arising out of tort actions for any amount exceeding five percent of the prior year's total tax levy
- The tax levy amount necessary to fund pension system contribution rate increases of more than two percent with regard to any applicable retirement system; school districts must still include in the levy limit calculation the amount necessary to fund any annual increase in rates up to two percent (e.g., if the TRS contribution rate increases from nine percent to 11 percent for a school district with an applicable teacher payroll of \$10 million, the district is still responsible for including the full increase of \$200,000 in its calculation of the tax levy limit)
- The tax levy amount necessary to fund budgeted capital expenditures, including for the debt associated with such expenditures

The new law does address the taxing needs of growing communities. By February 15 of each year, the commissioner of tax and finance must calculate a "quantity change factor" for each school district, which is intended to identify growth in the district's taxable real property on a percentage basis. The tax levy limit may be adjusted upward if there is taxable real property growth as identified by this calculation.

No later than March 1 of each year, each school district must determine its levy limit and submit its calculations and supporting information to the commissioner of education, the state comptroller, and the commissioner of tax and finance for review. School districts must also include information on the tax levy limit in the property tax report card and the school budget notice.

It is important to note that Chapter 97 does not in any way restrict a school board with regard to the amount of the tax levy increase required by the budget that the school board presents for voter approval. Instead, the law establishes the consequences for submitting a budget that exceeds the school district's applicable tax levy limit, i.e., the requirement that any such budget must be approved by at least 60 percent of the vote in order for the budget to pass.

Beware of the Tax Levy Limit for Contingency Budgets

In contrast to our existing laws on contingency budgets, Chapter 97 establishes a true and significant tax levy limit if a school board adopts a contingency budget. If a school board adopts a contingency budget after two budget defeats, or if the school board elects to adopt a contingency budget after an initial budget defeat, then the contingency budget may not require a tax levy that exceeds the prior year's levy. Under these circumstances, there is no adjustment for large tort judgments, large pension rate increases, or capital project expenditures, as is the case when determining whether a supermajority requirement applies to a budget vote. Nor is the levy limit adjusted in this context to account for growth in taxable real property. If the school district's tax levy the prior school year was \$20 million, then it can be no more than \$20 million under a contingency budget for the next school year, without qualification or exception.

This new limitation is far more restrictive than the previous rules governing the composition of contingency budgets. As a result, school districts should be prepared for the possibility of more active opposition to school districts budgets, given the stark certainty of no tax levy increase if the voters reject the budget and a contingency budget is adopted.

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Our Education Law Practice Group is continuing to assess the operation and implementation of the tax levy law, including several open issues. You are invited to a client workshop on August 29, 2011, to review in detail this new law and its many implications. [Click here to register for the workshop.](#) You will also receive a separate invitation. In the meantime, please feel free to contact any member of our practice group if you have any questions.

